



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nanaimo Affordable Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The Tenant applied for an order of possession, pursuant to section 54 of the *Residential Tenancy Act* (the "Act"). The participatory hearing was held, via teleconference, on July 26, 2021.

The Landlord was represented at the hearing by 3 agents. The Tenant attended the hearing with her friend. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence and did not take issue with the service of those documents.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to an order of possession pursuant to section 54 of the Act?

Background and Evidence

The Landlord explained that this is a subsidized low-income apartment building, and the Tenant currently resides in one of the units in the building. The Tenant pays a monthly

rent of \$375.00, and the rental amount has remained the same, regardless of which unit she has rented.

The Tenant explained that she filed this application because she simply wants to move back to her original apartment (unit 115), which she was forced to move out of because of a flood in December 2020.

The Tenant explained that on December 7, 2020, her apartment flooded (unit 115), and she subsequently moved out of that unit on December 7/8, 2020, and moved into unit 406 in the upper part of the building. The Tenant stated that as soon as she moved into unit 406, she signed a new tenancy agreement for that unit, and forfeited the keys to unit 115. The Tenant stated that in the months following her move into unit 406, she suffered allergies and had reactions which she suspects are related to the old carpets, and being so close to the laundry dryer vents for the building.

The Tenant asked to be moved again, and the Landlord offered to move the Tenant to unit 407, which was next door. The Tenant stated that she moved into unit 407 on March 9, 2021, and signed a new tenancy agreement for that unit at that time. When the Tenant moved into unit 407, she forfeited her keys to unit 406, and cleared all her belongings out of that unit.

The Tenant stated that she has been residing in unit 407 since March 2021, and she still asserts she is having allergic reactions and poor health from living near the laundry facilities. The Tenant wishes to return to her initial unit (115), and stated that she was always under the impression she was going to be allowed to move back when the flood was remediated.

The Landlord stated that the flood was severe in December 2020, and it affected 3 other units in the building, all of which required significant drywall, electrical, and plumbing work. The Landlord stated that they never promised the Tenant that she could move back to unit 115, and each time the Tenant moved to other units, she signed a new tenancy agreement (copies provided into evidence), completed move-in and move-out inspections for the respective units, and forfeited the keys to her previous units, as she moved to the new one. The Landlord opines that this means she has created a new tenancy, each time she moved, and signed a new agreement, and she should not have an entitlement to move back to 115.

The Landlord also stated that unit 115 is still not remediated yet, nearly 7 months later, and they cannot afford to complete the repairs as quickly as hoped because of their

extremely limited budget. The Landlord also stated that each time they offered the Tenant a new place to move to, it costs them administrative costs, and they simply cannot afford to keep providing new suites for the Tenant to rent as it is cost prohibitive.

The Landlord stated that they were clear to the Tenant when she moved into unit 407 that she would not be allowed to move to another unit.

Analysis

A party that makes an application against another party has the burden to prove their claim. In this case, the burden of proof rests with the Tenant.

The Tenant is seeking an order of possession, pursuant to section 54 of the Act, in order to gain access to unit 115, which is the rental unit she used to occupy and rent prior to December 2020.

I have considered the totality of the evidence and testimony on this matter, and I accept that the Tenant had to move out of unit 115 due to a flood, which was beyond her control. I note that this flood happened on December 7, 2020, and the Tenant vacated unit 115 on or around December 7, 2020, and forfeited her keys at that time. Alongside this, the Tenant conducted a move-in inspection for unit 406, and signed a tenancy agreement to rent that unit, starting December 7, 2020. A copy of this tenancy agreement was provided into evidence.

I find the tenancy agreement and the tenancy itself for unit 115 ended on December 7, 2020, when the Tenant vacated that rental unit, returned the keys, and signed a new tenancy agreement for unit 406. Although the Landlord continued to try to accommodate the Tenant by offering another unit (407), and going through the transfer/move process once more, I find the Landlord was not obligated to do so, and each time the Tenant moved, she ended her previous tenancy agreement, and entered into a new one.

I find there is insufficient evidence that the Landlord and the Tenant ever agreed, formally, that the Tenant could return to unit 115, and I find her legal right to possess that rental unit ended when she moved to unit 406, following the flood. I find the Tenant is not entitled to an order of possession for unit 115, as that tenancy has ended, and there is insufficient evidence the Tenant has any legal or contractual rights to occupy and reside in unit 115 at this point.

I dismiss the Tenant's application, in full, without leave to reapply.

Conclusion

The Tenant's application is dismissed, without leave.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 27, 2021

Residential Tenancy Branch