Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OPL FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

   a) To obtain an Order of Possession for landlord's use of the property pursuant to sections 49 and 55 and to recover the filing fee for this application.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

   b) To cancel a notice to end tenancy for landlord's use of the property.

Service:

The Notice to End Tenancy is dated July 10, 2013 to be effective September 30, 2013 and the tenant confirmed it was served by posting it on her door. Both parties confirmed they received each other's Application for Dispute Resolution by registered mail. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 49 and he is entitled to an Order of Possession or has the tenant demonstrated that the notice to end tenancy for landlord's use of the property should be set aside and the tenancy reinstated? Is the landlord entitled to recover the filing fee?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in January 2007, no written agreements were made, it is now a month to month tenancy, rent is $600 a month and no security deposit was paid. The landlord served a Notice to End Tenancy for the following reason:

   a) All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord provided the Contract of Purchase and Sale as evidence; in one of the addendums the purchaser states they require the unit to occupy themselves. The landlord has provided two months' free rent to the tenant to compensate her. He said she had been a good tenant and had done work in the unit but he has suffered some income reversals and has to sell his investment properties. He said he does not want to claim the filing fee for this application.

The tenant outlined the renovations she had done in the property and said she only did them for she thought she had an agreement that it would be a long term tenancy and the landlord would only sell to an investor who would allow the tenancy to continue. She has also initiated a Small Claims Court action on this matter. She also complained of the constant notices on her door, of threats to change the locks and unexpected visits from the landlord. She has a disability and finds these notices and behaviour are detrimental to her health. She asks that any Order of Possession not be effective until midnight on September 30, 2013.

After discussion, the parties agreed to settle certain issues as follows:
Settlement Agreement:
1. **The landlord will enquire from the Purchaser's lawyer and try to negotiate a move-out time of up to midnight September 30, 2013 although he cannot guarantee the outcome as this is contrary to the agreed possession time on September 30, 2013 on the Contract of Purchase and Sale.**
2. **The landlord agrees he will post no more Notices on the tenant's door and request the Strata to post no more Notices also.**
3. **The landlord agrees he will not threaten to, nor will he change any locks on the tenant's unit, he will not do any more inspections nor make any more unexpected visits.**

Included with the evidence are copies of the Contract of Purchase and Sale with addendums, several Notices which the tenant said were posted on her door, a statement of the tenant and a number of photographs illustrating the work she has done on the unit.   On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.
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<u>Analysis:</u>
The onus is on the landlord to prove on a balance of probabilities that they have cause to evict the tenant. I find the landlord has satisfied the onus of proving that all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give a Notice to End Tenancy because the purchaser or a close

family member intends in good faith to occupy the rental unit. I find the evidence of the landlord credible as it is well supported by the Contract of Purchase and Sale and the Addendum in which the purchaser states they intend to occupy the unit themselves. I find the landlord has satisfied his obligations under section 49 and 51 by providing two months' free rent to the tenant. I find the landlord entitled to an Order of Possession effective September 30, 2013.

I dismiss the application of the tenant to cancel the Notice to End Tenancy for the reasons stated above. As the parties reached certain agreements in the hearing, I will issue an Order to enforce those agreements.

Conclusion:

I find the landlord entitled to an Order of Possession effective September 30, 2013. The landlord agreed to waive the filing fee so none is awarded to him. I dismiss the application of the tenant.

Pursuant to the settlement agreement made in the hearing:

I HEREBY ORDER THAT:

(i) the landlord enquire from the Purchaser's lawyer and try to negotiate a move-out time of up to midnight September 30, 2013 although success is not guaranteed.

(ii) the landlord not post any more Notices on the tenant's door and request the Strata to post no more Notices also.

(iii) the landlord not threaten to, nor change any locks on the tenant's unit, do any more inspections or make any more unexpected visits.

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: September 04, 2013

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Residential Tenancy Branch