



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use, which, although showing the date of September 30, 2008, was actually issued on August 30, 2008, according to the testimony of both parties. The tenant's application also included a request for an order for the landlord to make repairs to the unit.

Both the landlord and the tenant, as well as an advocate for the tenant, appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

- The issues to be determined based on the testimony and the evidence is whether the Two-Month Notice to End Tenancy for Landlord's Use:
 - (1) Compliant with the Act and properly served on the tenant in the approved form pursuant to section 49(7) with adequate notice of at least two months effective the day before the day rent is due pursuant to section 49(2)
 - (2) Validly based on ending the tenancy for the permitted reason that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(3) As the issue of bad faith had been alleged by the tenant, was there an element of bad faith? In particular is there an ulterior motive for ending the tenancy?

The burden of proof is on the landlord to establish that the notice was issued in good faith and that the rental unit was utilized for the stated purpose

The burden of proof is on the tenant in regards to proving that the Landlord's notice did not comply with the Act and that damages and losses were incurred due to the landlord's violation of the Act.

Preliminary Matters

Request for More Time to Make Application

The tenant's application included a request to allow more time to make an application. However, I find that an extension of the time limit is not necessary as the tenant filed for dispute resolution within the 15-day deadline after receiving the notice,

Effective Date of Notice

Notice issued by the landlord was erroneously dated September 30, 2008, instead of the correct date, as confirmed by both parties, of August 30, 2008. The Landlord served the Notice by mail.

I note that section 90 of the Act provides direction for when a document is deemed to have been served:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

(b) if given or served by fax, on the 3rd day after it is faxed;

(c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;

(d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left. (my emphasis)

Accordingly I find that the Two-Month Notice to End Tenancy, although mailed on August 30, 2008, was deemed to have been served to the tenant on September 4, 2008.

In regards to a two month notice under section 49 of the Act, the effective date must be:

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Accordingly, and pursuant to my authority under section 53 of the Act, I find that the effective date of the Notice in compliance with the legislation cannot be before November 30, 2008.

Background and Evidence

Submitted into evidence by the applicant/tenant in support the application was a copy of a hand-written chronology of events and commentary on issues in regards to the tenancy between January 2008 and July 28, 2008. Also submitted into evidence was a copy of the Notice to End Tenancy issued by the landlord.

The tenant testified that she believed that the landlord was not intending in good faith to occupy the unit and pointed out that the landlord had other options to take another vacant unit in the building. The tenant also hoped to be granted more time to find suitable accommodation.

In regards to the tenant's desire to be granted more time to find another unit, a mediated discussion ensued and the parties all agreed that the end date for the tenancy should be November 30, 2008 and I find that pursuant to the mutual agreement reached by the parties, an Order of Possession effective November 30, 2008 will be issued to the landlord.

Conclusion

I order that the effective date that this tenancy must end is November 30 by mutual consent and I hereby issue an Order of Possession to the landlord reflecting the agreement reached by the parties. This Order must be served on the tenant and may be filed in the supreme court of British Columbia and enforced as an order of that Court.

I find that the tenant is entitled to be reimbursed the \$50.00 paid to file this application and order that the tenant be credited \$50.00 by the landlord towards the tenant's rental account. I order that all other provisions of the Act including sections 38, 49, 50 and 5, will apply to the ending of this tenancy. The remaining claims in the tenant's application are dismissed.

October 16, 2008

Date of Decision