

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: CNC, FF.

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to cancel the notice to end tenancy for cause, pursuant to Section 47.

On November 20, 2008 the fire department inspected the building complex and advised the landlord that the building was in need of repairs, failing which the landlord would have to cease use and occupancy of the building. Accordingly, on January 20, 2009, the landlord served a notice to end tenancy on the tenant, even though the landlord had not yet received the hard copy of the order.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues

Does the landlord have cause to end tenancy?

Background and Evidence

The tenant testified that the tenancy started approximately three years ago. On January 20, 2009, the tenant received a notice to end tenancy for cause with an effective date of February 28, 2009. The reason identified on the notice for its issuance is as follows:

Rental unit/site must be vacated to comply with a government order.

The tenant stated in the application to set aside the notice, that the landlord had not yet received an order from the fire department at the time the landlord served the notice to end tenancy and hence did not have cause to serve the notice to end tenancy on the tenant. However, the landlord received the order on March 06, 2009 and the tenant was provided with a copy of the same on March 09, 2009.

The landlord testified that the fire department conducted a follow up inspection on March 03, 2009 and served the landlord with an order to either repair the building within 30 days to meet the requirement of the B.C. Fire Code and B.C. Building Code or discontinue use and occupancy of the premises.

The landlord stated that the owner of the building has financial issues and has no plans to upgrade the building to meet the safety codes as set by the fire department. The landlord also stated that even if the landlord decided to upgrade the building to meet the safety standards of the fire department, the extent of the repairs would require the suites to be vacant.

Analysis

Based on the oral and written testimony of the landlord and tenant, I find that the landlord has received an order directing the landlord to upgrade the rental unit to meet safety standards within 30 days or remove all occupants of the building.

Pursuant to section 47(d) of the *Residential Tenancy Act*, the landlord may give notice to the tenant to end the tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority. Accordingly, the notice to end tenancy is upheld and the tenant's application to cancel the notice to end tenancy is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective March 31, 2009. Under the provisions of section 55(1), of the *Residential Tenancy Act*, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession effective on or before 1:00pm on March 31, 2009. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession, effective on or before 1:00 p.m. on March 31, 2009. Accordingly, the tenant's application to cancel the notice to end tenancy pursuant to Section 49 is dismissed.

Dated March 13, 2009.

Dispute Resolution Officer