



Dispute Resolution Services

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

Decision

Dispute Codes: CNL CNR OLC FF

Introduction

This hearing dealt with two applications by the tenants. In the first application, the tenants applied to cancel a notice to end tenancy for landlord's use, as well as for an order that the landlord comply with the Act, regulation or tenancy agreement.

In the second application, the tenants applied to cancel a notice to end tenancy for unpaid rent. In the hearing the landlord and tenant both agreed that the tenant paid the rent within 5 days of receiving the notice, and that notice is therefore cancelled.

One of the two tenants and the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Is the notice to end tenancy for landlord's use valid?

If the notice is valid, is the landlord entitled to an order of possession?

If the notice is valid, is the tenant entitled to one month's compensation?

Should I order that the landlord comply?

Background and Evidence

On March 31, 2009, the landlord served the tenants with a two-month notice to end tenancy for landlord's use. The landlord's reason for ending the tenancy was that he had all the necessary permits and approvals required by law, and intended in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The evidence of the landlord regarding the intended renovations was as follows. The landlord obtained a permit to relocate the kitchen sink, and no further permits are required for the intended renovations. The building is over 50 years old, and needs renovation. The landlord is in the process of renovating all of the units in the building, and several units have already been renovated. In regard to this unit, the landlord intends to relocate the kitchen sink and install new kitchen fixtures, install new flooring and tiles, paint the unit, and possibly replace the bathroom vanity and the bathtub. The landlord estimated, based on the renovations on other units, that he would require vacant possession of the unit for one to two months, because they need to rip everything up.

The evidence of the tenant was as follows. The rental unit does not require major repairs or renovations such that vacant possession is required. The landlord carried out significant repairs in December 2007 but vacant possession was not required at that time. The tenant submitted photographs to show that the rental unit is in good condition. The tenant believes the landlord's real reasons for issuing the notice are that he wants to raise the rent and does not want to respond to the tenant's requests for regular maintenance and repairs. The landlord attempted to illegally increase the rent by over 35 percent, and the tenant had to proceed to dispute resolution in 2007 in order to force the landlord to do necessary repairs. The tenant also stated that the landlord previously attempted to evict him for cause. The tenant did not provide any documentary evidence to support his allegations of an illegal rent increase or a notice for cause.

The landlord's response was that the tenant was lying about an illegal rent increase and about the landlord attempting to evict the tenant for cause. In the hearing the landlord verbally requested an order of possession but stated that he would be willing to extend the effective date to the end of June 2009.

Analysis

In considering all of the testimonial, photographic and documentary evidence, I am satisfied that the landlord had all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The landlord is in the process of renovating all of the rental units in the building and has already carried out renovations on several of the units. The landlord has obtained a permit to relocate the kitchen sink. The tenant did not provide sufficient evidence to establish either that the landlord does not intend to renovate, or that the landlord's primary motive for ending the tenancy was a bad faith intention to raise the rent or otherwise evict a "problem" tenant.

I find that the notice to end tenancy for landlord's use is valid, and the landlord is entitled to an order of possession effective June 30, 2009.

The tenant is entitled to one month's compensation pursuant to the two month notice to end tenancy. The tenant may withhold the rent for June 2009 as full compensation for this amount.

As the tenant did not provide specific evidence that the landlord was acting contrary to the Act, regulation or tenancy agreement, I do not find it necessary to address the portion of the tenants' second application regarding an order that the landlord comply.

The tenants paid the filing fee on both applications and applied in both for recovery of the filing fee. The tenants were unsuccessful in their first application. As the tenants paid the rent within 5 days of receiving the 10 day notice, their second application, to cancel that notice, was not necessary. I therefore decline to award recovery of the filing fee on either application.

Conclusion

I grant the landlord an order of possession. The tenants must be served with the order of possession. Should the tenants 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.

Dated May 21, 2009.