



Dispute Resolution Services

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

Decision

Dispute Codes: CNL, MNDC

Introduction

This hearing dealt with the tenant's application for cancellation of the landlord's 2 month notice to end tenancy for landlord's use of property, and a monetary order as compensation for damage or loss under the Act. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to either or both of the above

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on November 1, 2007. Rent in the amount of \$525.00 is payable on the first day of the month, and a security deposit of \$250.00 was collected on September 1, 2007.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated May 31, 2009. The tenant considers that the notice should be set aside as it has not been properly completed by the landlord. For example, the tenant points out that his name had been spelled incorrectly, that the wrong unit number has been identified and that the landlord has failed to sign the notice.

As to the reason why the landlord wishes to have the tenant vacate the unit, the landlord stated that it was for his fiancé's use. The provisions of section 49 of the Act were discussed during the hearing and the landlord conceded that "fiancé" does not constitute "close family member" as defined in this section, and for the purposes of

notice given pursuant to this section of the Act. Accordingly, the landlord stated he would not presently proceed to have the tenant vacate the unit.

For his part, the tenant states that his wish is to continue to reside in the unit permanently. Further, the tenant seeks compensation for “stress, time and loss of security of my home.”

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property. The reason shown on the notice for its issuance is as follows:

The rental unit will be occupied by the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Section 49 of the Act speaks to **Landlord's notice: landlord's use of property**. In particular, this section of the Act provides that

“close family member” means, in relation to an individual,

(a) the individual's father, mother, spouse or child, or

(b) the father, mother or child of that individual's spouse;

As the landlord's stated intention was to have the unit available for his fiancé, I find that the landlord's notice does not comply with the above statutory provisions. Accordingly, I hereby cancel the landlord's notice with the effect that the tenancy continues in full force and effect.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, and provides in part:

72(1) The director may order payment or repayment of a fee under section 59(2)(c) *[starting proceedings]* or 79(b) *[application for review of director's*

decision] by one party to a dispute resolution proceeding to another party or to the director.

As the tenant's \$50.00 filing fee for his application was waived, I make no award to the tenant in that regard.

As to the suggestion that the landlord's issuance of the notice was a breach of the tenant's right to quiet enjoyment, I find that the landlord's mere issuance of the notice is insufficient to support such a claim. Accordingly, I dismiss that aspect of the tenant's application.

For reference, the attention of the parties is drawn to Part 4 of the Act – **How to End a Tenancy, Division 1 – Ending a Tenancy** (sections 44 – 53). Further, the parties are referred to section 28 of the Act which speaks to **Protection of tenant's right to quiet enjoyment**, and Residential Tenancy Policy Guideline # 6 which addresses **Right to Quiet Enjoyment**.

The full text of the legislation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more, can be accessed via the website:

www.rto.gov.bc.ca/

Conclusion

Pursuant to all of the above, I hereby cancel the landlord's 2 month notice to end tenancy for landlord's use of property. The tenancy therefore continues in full force and effect.

I dismiss the tenant's application for a monetary order as compensation for damage or loss under the Act.

DATE: June 26, 2009

Dispute Resolution Officer