



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNL, OLC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application to cancel a Notice to End Tenancy issued for Landlord's Use, that the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy issued on July 13, 2009 be cancelled?

Is the landlord complying with the Act?

Is the tenant entitled to filing fee costs?

Background and Evidence

This tenancy began on June 1, 2007 and rent is currently \$395.00 per month, due on the first day of the month.

The landlord and the tenant agree that the landlord served the tenant via registered mail with a Notice to End Tenancy for a Landlord's Use of Property. The tenant confirmed receipt of the notice on July 30 and applied for dispute resolution within fifteen days of the established service date; July 18, 2009. The Notice required the tenant to vacate the rental unit on September 30, 2009.

Residential Tenancy Branch
Ministry of Housing and Social Development

The reason for ending the tenancy stated on the Notice was that the rental unit will be occupied by the landlord and, in addition, that the rental unit will be occupied by a family corporation who owns the rental unit, or whose close family members own, all the voting shares.

The landlord testified that he is the sole voting share member of the limited company that owns the rental unit. The landlord testified that he has been renovating another unit he owns in the building (unit #3) and that renovations have taken much longer than required, resulting in a need for the landlord to move into unit #5. The landlord stated that he has had problems completing the renovation work to this 440 square foot unit and expects the work to take a further two months to complete; thus necessitating his need to occupy unit #5.

The landlord testified that he is also seeking rezoning of unit #5, but that this process has yet to be completed with the City of Victoria. The landlord testified that he interpreted "own use" as having a broad application allowing occupation for any purpose necessary.

The tenant testified that at the end of May, 2009 the occupant of unit #3 was evicted. The landlord confirmed that he gave that occupant notice to end tenancy for landlord's use for the reason that a family corporation owns the rental unit and that it would be occupied by the landlord who is the sole voting share member of the family corporation.

The landlord testified that he has not hidden the fact that he is pursuing rezoning and that he fully intends to move into unit #5 as a result of renovation delays and the poor living conditions created in unit #3 as a result of the renovation. The landlord testified that he is also living in Vancouver and spending some time in unit #3, but plans to move to Victoria and reside in unit #5 to oversee the renovations in unit #3.

The landlord submitted as evidence his March 9, 2009 letter to the tenant which outlines the landlord's recent purchase of the property and his intention to convert the tenant's unit from a bachelor suite to commercial use. The landlord also submitted a June 28, 2009 letter to the tenant offering two months free rent to the tenant if he is willing to give notice to move out prior to the rezoning process being successfully completed. The landlord provided a copy of a July 13, 2009 letter to the tenant which was accompanied by the Notice to End Tenancy. This letter states that the landlord plans on taking possession of the rental unit on the last day of September.

The tenant testified that he has contacted the City of Victoria planning department staff who told him that vacant possession provides a greater likelihood of a successful rezoning application. The landlord countered that this is only hearsay.

Analysis

The tenant has questioned the intention of the landlord and whether the landlord, in good faith, plans to use the rental unit for the intended purpose. The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

In determining the validity of the Notice to End Tenancy I have considered the eviction of the tenant from unit #3 which occurred at the end of May, 2009. There is no dispute that the occupant who lived in unit #3 was evicted as the landlord wished to occupy that unit for his own use. The landlord's decision to renovate that unit and the resulting renovation delays have caused the landlord, six weeks after he took possession of unit #3, to issue a Notice to End Tenancy for unit #5, for the same reason given to the occupant of unit #3.

The landlord has not hidden the fact that he is pursuing rezoning of unit #5, but I must consider the intention of the landlord and the recent eviction of another tenant, less than six months ago, for the same purpose. I have also considered the fact that, only six weeks into the vacancy created in unit #3, the landlord has presented delayed renovations as a reason for the need to occupy unit #5. There is no evidence before me supporting the testimony that, by mid-July, it was determined that renovations to this small unit would be delayed beyond September 2009.

I do not find that the landlord has operated with a dishonest motive. However, I find that the reason stated on the Notice to End Tenancy issued on July 13, 2009 is not the motivation for ending this tenancy.

Within the past six months the landlord has obtained possession of one rental unit in the same building, in order to occupy the unit for his own use. I reject the landlord's contention that, only six weeks into renovations of unit #3, he determined he must occupy a second rental unit in the same building, for the same purpose. The landlord has indicated that he will take possession and occupy unit #5, however, I have taken into account the intention of the landlord expressed in his letters to the tenant, submitted as evidence, whereby the landlord indicates that his ultimate goal is rezoning of rental unit #5. I have also considered the evidence submitted by the landlord requesting the tenant provide notice prior to rezoning and accept the landlord's offer of two month's free rent.

Section 49(6) of the Act provides landlords with an opportunity to issue notice to a tenant when the landlord has all of the necessary permits and approvals required by law



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

to renovate or convert the unit to non-residential use. The landlord has not yet obtained these permits or approvals, although he is attempting to do so. I accept that the landlord may well wish to possess the rental unit, but I find that the motivation for this possession is not for the intended purpose presented by the landlord.

Therefore, I find that the Notice to End Tenancy for Landlord's Use issued on July 13, 2009 is of no force or effect and this tenancy shall continue.

I find that the tenant's application has merit, and he is entitled to recover the filing fee from the Landlord that he paid for filing this Application for Dispute Resolution.

Conclusion

The Notice to End Tenancy for Landlord's Use issued on July 13, 2009 is cancelled and is of no force or effect. The tenancy shall continue.

As the tenant's application has merit the tenant is entitled to the \$50.00 filing fee costs which may be deducted from the next month's rent owed.

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 23, 2009.

Dispute Resolution Officer