

DECISION

Dispute Codes: CNL, FF

Introduction

This is the Tenant's application to cancel a Notice to End Tenancy for Landlord's Use, and to recover the cost of the filing fee from the Landlords.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Should the Notice to End Tenancy issued July 31, 2009, be cancelled?
- Are the Tenants entitled to recover the cost of the filing fee from the Landlords?

Background and Evidence

The Tenants gave the following testimony:

- The tenancy started on May 31, 2005. The Landlords are tenants under a commercial tenancy, and run a business on the property where the Tenant's rental unit is situated.
- The Landlords' landlord sold the property to new owners. The new owners took possession of the property on August 27, 2009.
- On July 31, 2009, the Landlords issued a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective end of tenancy date of September 30, 2009. The Tenants submit that this is not a valid form and it should be cancelled. In the alternative, the Tenants submit that they did not receive the Notice to End Tenancy until August 1, 2009, when they returned from holidays, and therefore the effective end of tenancy date, if the form is upheld, is October 31, 2009.
- The Tenants testified that they have been advised by the Landlords that the new owners may be intending to demolish the rental unit, but they have had no indication of when that might occur.

- The Tenants submitted that the true motivation for issuing the Notice to End Tenancy is to punish the Tenants for bringing an Application for Dispute Resolution before the Residential Tenancy Branch in June, 2009.

The Landlords gave the following testimony:

- The Landlords served the Tenants with the Notice to End Tenancy on July 3, 2009, by posting the Notice on the Tenants' door at the rental unit. The Landlords acknowledged that the Tenants were away on holidays when the Notice was posted.
- The Landlords submitted that the Tenants are aware that the property has been for sale for a couple of years.
- The Landlords have had no contact with the new owners, but have been communicating with them through their agent. The new owner's agent sent a letter to the Landlords advising that the new owners wish to demolish the barn and the house on the property.
- The new owner has not yet served the Landlords with a Notice to End Tenancy. On August 27, 2009, the Landlords entered into an informal agreement with the new owner's agent that the Landlords would be allowed to remain on the property for a few months until the new owner commenced demolition of the barn and house.
- The property was sold to new owners on July 27, 2009, with a completion date of August 27, 2009.
- The Landlords testified that the new owner's agent knew about the Tenant's application for Dispute Resolution and declined to attend the Hearing.
- The Landlords requested an Order of Possession.

Analysis

I heard testimony from both parties that the new owners of the property are going to convert the rental unit to non-residential use. The residential tenancy agreement is between the Landlord and the Tenant. The Landlord, in good faith, issued the Tenant with a Notice to End Tenancy in order to provide the Tenants with 2 months notice

under Section 49 of the Act because of the new owner's intent to convert the rental unit to non-residential use. The Tenants would have no such protection under the *Commercial Tenancy Act*. I dismiss the Tenants' application to cancel the Notice to End Tenancy.

The Landlords requested an Order of Possession. I find that the Tenants did not receive the Notice to End Tenancy until August 1, 2009, when they returned from holidays. Therefore the effective date of the end of tenancy is October 31, 2009. I hereby issued an Order of Possession for 1:00 p.m. October 31, 2009.

Pursuant to Section 51 of the Act, the Tenants are entitled to the equivalent of one month's rent in compensation.

The Tenants have not been successful in their application and are not entitled to recover the cost of the filing fee from the Landlords.

Conclusion

I hereby grant the Landlords an Order of Possession effective **1:00 p.m., October 31, 2009**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: October 1, 2009.
