



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, OPT, FF

Introduction

This hearing dealt with the tenants' application to cancel a Notice to End Tenancy for Landlord's Use of Property, for an Order of Possession for the tenants, and recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard.

As preliminary issues, I determined that the unsigned Notice to End Tenancy that was submitted as evidence was the landlord's extra copy but that the Notice served upon the tenants was signed. I also determined that the tenant had not served his evidence upon the landlord and I could not accept the documentation as evidence. Rather, I provided the tenant the opportunity to read from relevant documents.

Issues(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Does the tenant require an Order of Possession?

Background and Evidence

I heard undisputed testimony as follows. The tenancy commenced December 15, 2008 for a one year fixed term. At the end of the fixed term the tenants continued to reside in the rental unit on a month-to-month basis. The tenants are required to pay rent of \$2,000.00 on the 1st day of every month. On January 31, 2010 the female tenant was personally served with a *2 Month Notice to End Tenancy for Landlord's Use of Property*

(the Notice). The Notice has an effective date of March 31, 2010 and indicates the reason for ending the tenancy is because the rental unit will be occupied by the landlord, the landlord's spouse, or a close family member of the landlord or landlord's spouse.

In making this application, the tenants submitted that prior to receiving the Notice, the parties had agreed that the tenancy would continue until at least May 2010. The tenants also submitted that in the days that preceded the issuance of the Notice, the landlord had communicated to the tenant that the landlord's nephew would be moving into the rental unit.

The landlord testified that there had been a plan for the nephew to purchase the rental unit but those plans changed and the landlord decided that she will be moving into the rental unit as of April 1, 2010 and sell or rent her current residence due to personal reasons. The landlord was reluctant to elaborate upon her personal circumstances; however, upon enquiry, the tenant did not express reasons to doubt the explanation given by landlord. Rather, the tenant wanted the landlord to keep her commitment to permit the tenants to stay until the end of May 2010. The landlord was of the position the tenants were told there would be no guarantees with respect to staying until the end of May 2010.

Upon further enquiry, the tenant confirmed that the commitment from the landlord was subject to certain circumstances.

Analysis

The landlord's right to serve a *2 Month Notice to End Tenancy for Landlord's Use of Property* is provided in section 49 of the Act. Section 49(3) provides

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Close family member is defined in section 49(1) as

"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;

Where a Notice to End Tenancy comes into dispute, the burden is upon the landlord to show that the landlord has met the criteria for ending the tenancy for the reasons stated on the Notice. In this case, I find the landlord has to show that she, or a close family member that meets the definition provided in this section of the Act, will be occupying the rental unit, and has a good faith intention to do so.

Residential Tenancy Policy Guideline 2 provides for interpretation of the “good faith” requirement. The policy guideline provides, in part,

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.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a “good faith” intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a “good faith” intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the “good faith” intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

As the landlord stated that she will be moving into the rental unit due to her own personal circumstances and the tenant did not dispute the personal circumstances to be true, I accept that the landlord has met the criteria for ending the tenancy for landlord's use, including the good faith requirement.

With respect to a previous commitment to continue the tenancy until May 2010 I do not find that commitment constitutes a fixed term tenancy set to expire May 31, 2010. A fixed term tenancy means a tenancy ends on a specific date and cannot be ended earlier by a tenant's notice or a landlord's notice for landlord's use. Given the tenant acknowledged that the commitment from the landlord provided some exceptions for landlord's use, I do not find the agreement consistent with a fixed term tenancy. Therefore, I found the tenancy to be on a month-to-month basis and the landlord is entitled to end a month-to-month tenancy upon service of a valid Notice to End Tenancy for Landlord's Use.

In light of the above findings, I uphold the Notice to End Tenancy and find that this tenancy shall end on the effective date of the Notice which is March 31, 2010. The tenants' request to cancel the Notice is dismissed.

Since the tenants are currently in possession of the rental unit, there is no need to issue the tenants an Order of Possession and I dismiss this portion of the tenants' application.

As the parties were informed, tenants in receipt of a 2 Month Notice have the right to:

1. End the tenancy earlier than the effective date on the Notice with 10 days of written notice from the tenants, as provided under section 50 of the Act; and,
2. Compensation from the landlord equivalent to one month of rent, as provided under section 51(1) of the Act.

In addition to compensation under section 51(1), if the landlord does not fulfill the reason for ending the tenancy for at least six months after the landlord occupies the

rental unit, the landlord is liable to further compensate the tenants the equivalent of two months of rent, as provided under section 51(2) of the Act.

If the parties have any further questions concerning ending the tenancy or tenant's compensation, the parties are urged to contact the Residential Tenancy Branch by telephone or online at www.rto.gov.bc.ca for more information.

Conclusion

The *2 Month Notice to End Tenancy for Landlord's Use of Property* was upheld and the tenants' application dismissed. The tenants are required to vacate the rental unit on or before March 31, 2010. The tenants remain entitled to compensation as provided under section 51 of the Act.

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: February 18, 2010.

Dispute Resolution Officer