

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened on this date by way of conference call to deal with the tenant's application to cancel the landlord's Notice to End Tenancy for the landlord's use. Both parties gave affirmed evidence and had an opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Should the Notice to End Tenancy for landlord's use be cancelled?

Background and Evidence

The parties testified that the Two-Month Notice to End Tenancy for Landlord Use was issued to the tenant on January 29, 2010. The landlord had indicated on the form that the reason for the Two Month Notice was because the rental unit will be occupied by a close family member of the landlord. The landlord testified that his daughter has been attending school in the Okanagan and will be attending school in North Vancouver on May 28 or June 28, 2010.

However, the tenant raised the issue of bad faith on the part of the landlord and gave testimony that the landlord showed the unit to another person whom he introduced as his cousin, prior to giving the Notice to End Tenancy, and told the tenant that he would be receiving notice because he intended to rent to the cousin. The tenant further testified that the first he heard about the landlord's daughter moving in was at this hearing.

Analysis

As the issue of bad faith has been alleged by the tenant the following questions must be answered:

1. Whether there an ulterior motive on the part of the landlord for issuing the notice to end the tenancy, and
2. Whether the landlord has met the burden of proof to establish that the landlord intends in good faith to have a close family member, that being a father, mother, spouse or child of the landlord or of the landlord's spouse occupy the unit?

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was issued in good faith.

In regards to a two month notice under section 49 of the *Act*, the effective date must be:

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Accordingly, and pursuant to my authority under Section 53 of the *Act*, I find that the effective date of the Notice in compliance with the legislation is March 31, 2010.

After a mediated discussion the parties came to a mutually agreeable resolution, the terms of which are as follows:

- The tenant agrees to vacate the unit on or before March 31, 2010 at 1:00 p.m. and the landlord will be issued an enforceable Order of Possession effective that date.
- The tenant agrees to pay the utilities up to the end of March, 2010.
- The landlord agrees to repay to the tenant one month of rent for the month of March, 2010 in the amount of \$1,248.00.

- The landlord agrees to pay the tenant \$2,496.00, being 2 month's rent and the issue of bad faith becomes a moot point.
- The tenant's security deposit and interest being held in trust by the landlord will be refunded.
- The tenant commits to leaving the unit in a clean undamaged condition as required under the *Act*.
- The tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply, and the landlord is at liberty to re-rent the unit.

The above terms were mutually agreed to by both parties and are enforceable under the *Act*.

Conclusion

Based on the agreement reached by the parties during these proceedings, I hereby order that the tenant is entitled to have rent waived by the landlord for the month of March, 2010, and the landlord will reimburse the tenant \$1,248.00; the tenant will also be entitled to double one month's rent in the amount of \$2,496.00, and the landlord will return to the tenant the security deposit and interest in the amount of \$618.66. The landlord will pay the total amount of \$4,362.66 in the following instalments:

- a) \$2,000.00 on March 15, 2010;
- b) \$1,744.00 on March 31, 2010, when the keys are to be returned to the landlord;
- c) \$618.66 on April 15, 2010.

Based on the agreement reached by the parties during these proceedings, I grant the landlord an Order of Possession effective March 31, 2010 at 1:00 p.m. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

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: March 09, 2010.

Dispute Resolution Officer