

DECISION

Dispute Codes: CNL, MNDC, and FF

Introduction

This application was brought by the tenant seeking to have set aside a two-month Notice to End Tenancy for landlord use dated May 31, 2010 and setting an end of tenancy date of July 31, 2010. The tenant also seeks a Monetary Order for loss or damage under the legislation or rental agreement and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy was served, in good faith to enable the landlord to accommodate a close family member and whether it should be set aside or upheld. The application also requires a decision on whether the tenant is entitled to a Monetary Order for loss or damage under the legislation or rental agreement.

Background and Evidence

The tenancy in question began on May 31, 2010 although the tenant had previously lived in the rental unit for seven years until that tenancy ended pursuant to a Mutual Agreement to End Tenancy signed on November 9, 2009. The agreement concluded the tenancy on March 1, 2010 and provided compensation equal to two month's rent for the tenant, an option to occupy the basement suite and an option to enter into a new rental agreement when renovations were complete in the subject rental unit, to be confirmed by February 28, 2010.

The previous landlord had offered the option of the basement suite to assist the tenant who was apprehensive about finding a new rental unit during the 2010 Winter Olympics.

In the interim, the present landlords had purchased the rental building, a side by side duplex, and took possession on February 26, 2010.

The landlords are a woman and her son-in-law. He gave evidence that they had purchased the property with the intention of using the subject rental unit to accommodate the daughter of the female landlord, sister-in-law of the male landlord.

They stated that they had advised the applicant tenant unequivocally at a meeting on February 27, 2010 and consistently thereafter of their intended use of the suite and of their intention to end his tenancy.

As a matter of note, the renovations were more extensive than had been contemplated by the previously landlord, required vacant possession and took approximately three months to complete.

Meanwhile, by letter of February 22, 2010, the applicant tenant had advised of his intention to move back into the rental unit when renovations were complete.

When the renovations were substantially completed, the landlords signed a month to month agreement and the applicant tenant moved in on May 31, 2010. On the same date, the landlords issued the tenant with a Notice to End Tenancy for landlord use to take effect on July 31, 2010.

The tenant first challenged the Notice to End Tenancy on the grounds that it was not given in good faith. However, he stated during the hearing that, having considered the landlords' evidence, he had come to believe that the landlords fully intended that the daughter of the female landlord would move in to the rental unit.

The tenant stated that he would never have agreed to suffer the discomfort of the basement suite had he not been led to believe that he would be able to enjoy a long term tenancy in the subject rental unit.

Analysis

The *Act* provides mechanisms for both a landlord and a tenant to end the tenancy, absent serious cause or unpaid rent. Where the tenant is normally required to give only one month's notice, the *Act* requires the landlord to give double the one month's notice when it is given for landlord use. In addition, the landlord must give one free month's rent, and take possession on penalty of an additional two months rent if the landlord does not use the unit for the stated and approved purpose. Clearly, the legislation works to ensure that Notice for landlord use are not taken lightly.

In evaluating a Notice to End for landlord use, policy guideline 2-2 advises that such notice must be given in faith and that:

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

In considering the present matter, I find no reason to question the food faith of the Notice to End Tenancy, and indeed, the tenant acquiesced to that premise during the hearing. Therefore, I can find no cause to set aside the Notice.

On hearing that determination, the landlords’ counsel requested, and I find they are entitled to an Order of Possession effective two days from service of it the tenant.

Conclusion

The landlords’ copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenant.

While I felt it necessary to address the matter of the Notice to End Tenancy and the Order of Possession in order to avoid prejudicing the landlord, I have agreed to reconvene the hearing at a later date to consider the tenant’s monetary claims.

Therefore, the hearing will reconvene at a time and date set out in the attached notice of hearing.

August 9, 2010
