

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant seeking to cancel a two month Notice to End Tenancy for Landlord's Use of the Property.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issues(s) to be Decided

Has the tenant established grounds to cancel the two Month Notice to End Tenancy for Landlord's Use of the Property?

Background and Evidence

This tenancy began on November 1, 2005 and the current monthly rent is \$591.00. On August 24, 2010 the landlord personally served the tenant with a two month Notice to End Tenancy for Landlord's Use of the Property. The stated reasons on the notice were:

1. The landlord or a close family member of the landlord would be occupying the rental unit; and
2. The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The tenant is the former caretaker in this multiple unit building. The tenant's employment as the caretaker has been terminated and the landlord has issued the two month Notice to End Tenancy to use the unit as he is taking over the management of the rental building.

The landlord explained that he currently resides in another city and has to travel to the rental property to conduct his business of being the caretaker. The landlord stated that

he has to stay in a hotel when he is in the city to manage the residential property. The landlord intends to convert the rental unit for his use as the caretaker and will reside there when and as needed.

The landlord stated that this unit has long been used by the caretaker of the building and is therefore the logical choice for his intended purposes. This unit is also located on the front of the building with a good view of the front entrance and the parking lot.

The landlord requested an Order of Possession effective November 1, 2010.

The tenant disputes the explanation given by the landlord. The tenant questioned whether the landlord would ever reside in this unit as he currently has another residence in another city. The tenant also questioned whether the landlord had already hired a new caretaker as the tenant understood that the landlord had given keys to the rental property to another individual.

The landlord denied the tenant's claim that he had hired another caretaker. The landlord stated that he provided buildings keys to another individual in the case of an emergency but stated that person is not the caretaker. The landlord again stated that the rental unit would primarily be used as the caretaker office and the landlord or his spouse would reside in the unit when required to do so in the course of their duties in managing the rental property.

Analysis

Section 49 of the *Act* provides that a landlord may end a tenancy in order to convert a rental unit for use by a caretaker, manager or superintendent of the residential property. In addition it also provides that a tenancy may be ended in order that the landlord or a close family member can occupy the rental unit.

I am satisfied that the primary purpose of the notice to end tenancy served on the tenant was for the landlord to use the rental unit as part of caretaking or managing the rental property. I am satisfied that the use of a rental unit for the landlord's use is not exclusively limited to residing in a rental unit but also encompasses other uses as determined by the landlord. I do not find that section 49 requires the landlord to ordinarily reside in the rental unit to use it for managing the residential property.

In addition, I find that the landlord is at liberty to hire a new caretaker and provide this rental unit as a residence provided in the course of caretaking duties. I am satisfied that both of these uses of the rental unit are contemplated by section 49 of the *Act*.

The tenant has not provided any evidence to call into question the landlord's stated use of the rental unit. I accept the landlord's evidence that this rental unit has historically been used by the caretaker and is ideally located in the property.

I am satisfied that the landlord is not acting in bad faith. The tenant is the former caretaker and I find it reasonable that the landlord wishes to retain this unit as the unit used by the caretaker.

Therefore I dismiss the tenant's application and I grant the landlord's request for an Order of Possession.

If the landlord fails to use the rental unit for the stated purpose within a reasonable time after the effective date of the notice to end tenancy, the tenant may file an application seeking compensation pursuant to section 51 of the *Act*.

Conclusion

The tenant's application is dismissed.

I grant the landlord an Order of Possession effective **November 1, 2010 at 1:00 p.m.** This Order must be served on the tenant. This Order may be filed with 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 06, 2010.

Dispute Resolution Officer