

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant to dispute a notice for landlords use of property. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started February 1, 2010 with rent of \$700.00, the tenant currently pays rent of \$400.00. On December 31, 2010 the landlord served the tenant with a Notice to End Tenancy for Landlord's Use of Property: landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The landlord's agent testified that the intention of the landlord is to fix up the property and install a caretaker on site to maintain the property for the landlord. The landlord's agent stated that the property is currently littered with inoperable vehicles, camper tops and discarded items and that these items will be removed from the property and disposed of. The landlord's agent stated that by order of the Court, control of the property has been transferred from one brother 'BK' to another 'DK'.

The landlord's agent stated in this hearing that the landlord does want the tenant to vacate the residence by March 4, 2011 but that the landlord is agreeable to working with the tenant and allowing the tenant time to remove his tools, vehicle, coke machine and wood from the property as the current snow conditions have made much of the property inaccessible.

The landlord's agent stated that they were confident that they could work with the tenant and therefore did not feel that an order of possession was necessary and did not request one. The landlord's agent testified that the tenant did not pay the rent for February 2011 and it was agreed to in this hearing that this amount would in turn be the 1 month's compensation the landlord was required to provide the tenant.

The tenant testified that his original tenancy agreement was with BK but that for the past few years he has dealt directly with DK. The tenant was concerned about moving his belongings off the property and as stated above, the landlord's agent is willing to allow the tenant some extra time to remove his tools, vehicle, coke machine and wood from

the property. The tenant brought up matters regarding the tenancy unrelated to this hearing and the tenant was advised that he may exercise his option of filing for dispute resolution through this office to address these concerns should he choose to do so.

Law

Residential Tenancy Act **Section 49 landlord's notice: landlord's use of property**

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;*
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;*
- (c) convert the residential property to strata lots under the Strata Property Act;*
- (d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;*
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;*
- (f) convert the rental unit to a non-residential use.*

Residential Tenancy Act **Section 51 Tenant's compensation: section 49 notice**

(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Residential Tenancy Policy **Guideline 2 Ending a Tenancy Agreement: Good Faith Requirement**

The Residential Tenancy Act¹ and the Manufactured Home Park Tenancy Act² allow the landlord to end a tenancy agreement if the landlord intends, in specified instances to change the use of the residential unit or manufactured home park site.

The specified circumstances in the Residential Tenancy Act are as follows:

- *the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent*

Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for landlord's use of property and the notice to end tenancy will be upheld and will be effective March 4, 2011.

I hereby dismiss the tenant's application for dispute resolution without leave to reapply.

Conclusion

The notice to end tenancy is upheld and will be effective March 4, 2011.

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 4, 2011

Residential Tenancy Branch