



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

During the hearing the landlord requested an order of possession should the tenant be unsuccessful in her application to cancel the notice.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided are whether the landlord is entitled to an order of possession if the tenant is unsuccessful in her Application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Sections 55 of the *Act*.

Background and Evidence

The tenancy began in August 1, 2006 as a month to month tenancy with a current monthly rent of \$1,000.00 due on the 1st of each month and a security deposit of \$550.00 was paid.

The landlord testified that in February 2011 he spoke to the tenant about ending the tenancy so he and his wife could move in to the rental unit. At that time the tenant mentioned to the landlord that she was having surgery in May 2011.

The landlord testified that he made the following two offers to the tenant:

1. If the tenant could move out before her surgery, the landlord would pay for the moving and help her move; or
2. If the tenant moved after the surgery she could remain in the rental unit until August 1, 2011.

The tenant testified that she felt she needed to be close to the hospital at least up until her surgery so decided not to move prior to the surgery. The landlord entered into a tenancy agreement for him and his family to live in an apartment for a fixed term that ends on September 30, 2011, a copy of the tenancy agreement was submitted into evidence.

The landlord issued and has submitted as evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property on June 1, 2011 with an effective date of August 31, 2011; citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

In her Application for Dispute Resolution, the tenant asserts that the landlord told her that he was paying more for an apartment waiting to move in to the dispute address but that she has a report from an agency that he lives at a house he owns and that she believes he just wants to raise the rent.

The tenant testified that based on advice obtained from the Residential Tenancy Branch she hired an investigator to determine where the landlord currently lives. The tenant submitted portions of a report from the investigators into evidence. The tenant could not explain why she felt that where he currently lived had an impact on his intention to move in to the rental unit.

The tenant also testified that she did not know for certain that the landlord intended to raise the rent, but that she had guessed that is what he wanted to do.

Analysis

Section 49(2) of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit by giving a notice to end the tenancy effective on a date that must be no earlier than 2 months after the date the tenant receives the notice and the day before the day in the month, that rent is payable under the tenancy agreement.

I find the landlord has sufficiently established his intention, in good faith, to move into the rental unit and the tenant has failed to provide any evidence to refute that intention, I find the 2 Month Notice to End Tenancy for Landlord's Use of Property to be made in good faith and therefore a valid notice.

I also find the landlord took extraordinary measures to accommodate the tenant and to offer her some options regarding when to end the tenancy in consideration her scheduled medical treatment and current medical condition. In essence the tenant has been aware of the landlord's intentions for the last 5 months.

As the landlord issued and served the notice to the tenant on June 1, 2011 with the effective date of the notice as August 31, 2011, I find the effective date of the notice is at least 2 months after June 1, 2011 and therefore in compliance with Section 49(2).

I also find that since rent is due on the 1st of each month, the effective day of the notice of August 31, 2011 is the day before the day in the month that rent is payable under the tenancy agreement and therefore compliant with Section 49(2).

Conclusion

For the reasons noted above, I dismiss the tenant's Application for Dispute Resolution, in its entirety.

I find the landlord is entitled to an order of possession effective **August 31, 2011 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: July 06, 2011.

Residential Tenancy Branch