



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction

This hearing was scheduled in response to the tenant's application to cancel a notice to end tenancy / and recover the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to either or both of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the 24 month fixed term of tenancy is from August 1, 2011 to July 31, 2013. Monthly rent of \$1,700.00 is payable in advance on the first day of each month, and a security deposit of \$850.00 was collected.

The tenancy continued following the sale of the unit, however, the new owner / landlord and the tenant signed a new tenancy agreement. The tenancy remains essentially unchanged except that the fixed term is shown on the tenancy agreement as the 19.5 month period from December 16, 2011 to July 31, 2013.

The landlord served a 2 month notice to end tenancy for landlord's use of property dated February 14, 2012. The notice was served by way of posting on the tenant's door on February 17, 2012. Thereafter, it is understood that the notice was also sent to the tenant via registered mail. On February 21, 2012 the tenant filed an application to dispute the notice. A copy of the notice was submitted in evidence. The reason shown on the notice for its issuance is as follows:

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.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 49 of the Act addresses **Landlord's notice: landlord's use of property**, and provides in part:

49(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that 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.**

[emphasis added]

Based on the documentary evidence and testimony of the parties, I find that the date shown on the landlord's 2 month notice by when the tenant must vacate the unit, is earlier than the date specified on the tenancy agreement as the end of tenancy. Accordingly, I find that the landlord's notice does not comply with the above statutory provisions. In the result, the landlord's notice is hereby set aside and the tenancy continues in full force and effect.

As the tenant has succeeded with this application, I order that the tenant may recover the \$50.00 filing fee by way of withholding this amount from the next regular payment of monthly rent.

Conclusion

The notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted. The tenant may withhold \$50.00 from the next regular payment of monthly rent in order to recover the filing fee.

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 07, 2012.

Residential Tenancy Branch