



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the "Act"), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenant. The Landlord's Application requested an order of possession. The Tenant's Application requested an order to cancel a Notice to End Tenancy.

The Landlord and Tenant attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession or should the Notice to End Tenancy be cancelled?

Background and Evidence

The parties agree that they have a tenancy and that the rental unit is a room in a house which the Landlord does not reside at. Both parties submitted a copy of a One Month Notice to End Tenancy into evidence. The parties confirmed at the hearing that they had received a copy of each other's application and hearing notice in advance of the hearing.

The parties agree that the Landlord personally served the One Month Notice to End Tenancy on the Tenant on March 07, 2012. The Notice states that the Tenant is given notice to move out April 30, 2012, because the rental unit/site must be vacated to comply with a government order.

The Tenant testified that he was aware there was a government order with regards to the house however he states he did not see it nor attend the information meeting about the order with the Landlord and other tenants as he was in the hospital. The Tenant stated that he had been planning to move out anyways but he had not found a new place and was having health issues. The Tenant did confirm that he received the One Month Notice to End tenancy but stated that he is still having difficulty locating another place to live and would like to continue to stay at the rental unit. The Tenant stated that

he does not understand why he is one of the tenants being evicted. The Tenant stated that if the Landlord has been ordered to reduce the rental units in the house from eleven to four or five, he would like to be one of the tenants who remain at the house.

The Landlord testified that a bylaw officer from the City ordered him to reduce the number of renters from eleven to four plus one supervisor. The Landlord stated the bylaw officer told him that the house where the rental units are had too many people and that this constituted illegal use and a bylaw contravention. The Landlord provided a copy of a letter dated March 05, 2012 from the legal counsel for the City which reiterated the City's position on the Landlord's bylaw contravention. The Landlord stated that he met with the tenants to discuss the bylaw contravention and posted a copy of the letter from the City's legal counsel at the rental accommodation. The Landlord stated that the tenants selected who would stay and who would move out. The Landlord stated that the Tenant had previously informed him that he was looking to move out. The Landlord stated that to be in compliance with the bylaw officer's order and reduce the number of tenants he gave each of the tenants who was being evicted a One Month Notice to vacate. The Landlord stated that he personally served the Tenant with the One Month Notice to vacate on March 07, 2012 providing the Tenant over a month and a half of notice to vacate the property for April 30, 2012.

The Landlord stated that the City took him to Court to obtain a formal Court order to enforce their bylaw officer's order. The Landlord stated that the City succeeded in obtaining a Court order against him on March 15, 2012 which states that by May 01, 2012 he must restore the property to its permitted uses and limit the number of roomers or boarders at the property to no more than four.

The Landlord explained that he needs the Tenant to vacate the rental unit so that he can be in compliance with the government order, and he wants to receive an order of possession.

At the hearing I advised the parties, that I was permitting the Landlord to provide a copy of the Court order into late evidence as long as it was received within 24 hours of the hearing. The Landlord agreed and also stated that he would deliver a copy to the Tenant. I received a copy of the March 15, 2012 Court order between the City and the Landlord into evidence on April 10, 2012.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant was personally served with the One Month Notice to End Tenancy on March 07, 2012, in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

The Tenant applied for Dispute Resolution within ten days of receiving the Notice, as required by the Act.

While the Tenant stated that he had not seen a copy of an order from the City, he confirmed he was aware of there being a City order and that other tenants were being evicted due to this as well as himself. The Landlord provided sufficient evidence from the City's legal counsel and the Court order to support that he is being required to reduce the number of renters from eleven to four at the rental house.

The Act permits a Landlord to provide a Tenant a One Month Notice to End Tenancy for cause in certain circumstances only. Section 47 (1) (k) of the Act states:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

I find that the Landlord has properly served the Tenant with the One Month Notice to End Tenancy and has provided sufficient evidence to support that the rental unit must be vacated to comply with a municipal order and a court order. I do not find evidence of any breach of the Act by the Landlord in providing a Notice to this Tenant, along with several others, to be evicted from the rental unit for compliance with the City bylaw and orders. As a result, I am dismissing the Tenant's Application. The tenancy will end effective 1:00 P.M. April 30, 2012, as stated on the Notice, which is more than 30 days after the deemed served date of the Notice.

As the Tenant's application is dismissed and the Landlord has made an application for an order of possession I must grant this request.

I find that the Landlord is entitled to an order of possession effective 1:00 P.M. on April 30, 2012.

Conclusion

I dismiss the Tenant's application.

I find that the Landlord is entitled to an order of possession **effective at 1:00 P.M. April 30, 2012**. This order may be filed in the Supreme Court and enforced as an order of that Court.

The order accompanies the Landlord's copy of this decision.

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: April 11, 2012.

Residential Tenancy Branch