



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction

This hearing concerns the tenant's application for cancellation of a 2 month notice to end tenancy for landlord's use of property / and recovery of the filing fee. Both parties participated and / or were represented at the hearing and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from September 1, 2011 to August 31, 2012. The template tenancy agreement has been amended and initialled by both parties to show that at the end of the fixed term, the tenancy "will continue on a month-to-month basis for up to 18 additional months." By way of an Addendum to the tenancy agreement the parties further agree, in part, as follows:

4. After the initial 12 month term, the tenancy becomes month-to-month for, at the election of the tenant, up to an additional 18 months. Tenant can terminate tenancy after initial 12 month term with 60 days noitce [sic] in writing.

Monthly rent of \$6,500.00 is due and payable on the first day of each month, and a combined security and pet damage deposit of \$6,500.00 was collected.

An earlier dispute between these same parties arose out of a change in circumstances for the landlord, pursuant to which she did not wish to proceed with the tenancy. In response to the tenant's application a hearing was held on September 29, 2011 (file # 779739). By decision of that same date, an order of possession was issued in favour of the tenant effective October 15, 2011.

Following from the above dispute the tenant filed a second application which led to a hearing on April 25, 2012 (file # 787911). In the result, by decision of that same date a monetary order was issued in favour of the tenant arising from his claim for compensation for damage or loss under the Act, Regulation or tenancy agreement, and recovery of the filing fee.

Further to all of the above, the landlord issued a 2 month notice to end tenancy for landlord's use of property dated April 11, 2012. The tenant filed an application to dispute the notice on April 25, 2012, which is within the 15 day time limit available for doing same after service. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is August 31, 2012. 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.

A range of possible remedies is set out in the tenant's application, chief amongst them being that the landlord's notice is set aside, with the effect that the tenancy continues in full force and effect until February 28, 2014.

During the hearing the parties exchanged views around some of the ways in which the dispute might be resolved.

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 63 of the Act addresses **Opportunity to settle dispute**, and provides that the parties may attempt to settle a dispute during a hearing. Pursuant to this provision, discussion led to a resolution and the parties specifically agreed as follows:

RECORD OF SETTLEMENT

- that the landlord's notice is hereby set aside, that the tenant will vacate the unit by not later than August 31, 2013, and that an order of possession will be issued in favour of the landlord to that effect;

- that in the event the tenant wishes to vacate the unit before August 31, 2013, the tenant will provide the landlord with 2 months written notice to that effect;
- that the tenant will pay monthly rent in the full amount of \$6,500.00 for each and every month during which the tenancy remains in full force and effect;
- that the tenant withdraws his application to recover the \$50.00 filing fee;
- that the above particulars comprise full and final settlement for both parties of the limited matters of dispute which are currently before me.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Saturday, August 31, 2013**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in 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: May 16, 2012.

Residential Tenancy Branch