



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL / CNL

Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession; ii) by the tenants for cancellation of a notice to end tenancy for landlord's use of property. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the "year to year" tenancy began on October 5, 2011. The tenancy agreement provides that the first payment of rent is due on October 1, 2011 and that, thereafter, monthly rent of \$700.00 is due and payable in advance on the first day of each month. A security deposit of \$350.00 was collected.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice dated May 31, 2012. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is July 31, 2012. The reason shown on the notice for its issuance is as follows:

All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenants filed an application to dispute the notice on June 14, 2012. While the tenants do not dispute the reasons identified on the landlord's notice, as above, they take the position that the tenancy cannot be ended prior to the end of the fixed term of the tenancy.

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 speaks to the **Opportunity to settle dispute**. Brief discussion between the parties during the hearing around how the dispute might be resolved, did not lead to a mutual agreement to settle the dispute.

Section 44 of the Act speaks to **How a tenancy ends**, and provides in part as follows:

44(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(v) section 49 [*landlord's notice: landlord's use of property*];

Section 49 of the Act, as previously cited above, provides in part as follows:

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.

Based on the documentary evidence and the affirmed testimony of the parties, I find that the tenants were served with a 2 month notice to end tenancy dated May 31, 2012.

I find that the tenants' application to dispute the notice, which was filed on June 14, 2012, was filed within the 15 day period available for doing same after service.

Section 53 of the Act addresses how **Incorrect effective dates automatically changed**, and provides in part:

53(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earlier date that complies with the section.

In view of the legislative provisions set out above, I find that the date by when the tenants must vacate the unit is September 30, 2012, and I hereby issue an order of possession in favour of the landlord to that effect. The tenants' application to have the notice set aside is hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., September 30, 2012**. This order must be served on the tenants. Should the tenants 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: July 09, 2012.

Residential Tenancy Branch