



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC LRE

This hearing dealt with the tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, seeking an order directing the landlords to comply with the Act, regulation or tenancy agreement, and to suspend or set conditions on the landlords' right to enter the rental unit.

The tenants and their agent and counsel for the landlords gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties disputed receipt of the other parties' evidence packages. The tenants denied receiving the landlords' evidence, and counsel for the landlords, stated the landlords had not received evidence from the tenants.

Both parties agreed that a 2 Month Notice to End Tenancy for Landlord's Use of Property had been submitted and reviewed by both parties, which was the extent of the documentary evidence relied upon for this Decision based on the disputed testimony of the parties with respect to service under the rules of procedure.

Preliminary Matters

During the hearing, both parties agreed that future rent payments will be made via post-dated cheque. Counsel for the landlords confirmed the landlords will provide their address in writing to the tenants new service address provided during the hearing. Within 7 days of receiving the landlords' address, the tenants will mail a post-dated rent cheque for October 2012. Future rent payments related to this tenancy will be made via post-dated cheque for the purposes of limiting contact between the two parties.

The agent for the landlords stated that a subsequent 1 Month Notice to End Tenancy for Cause was served by mail to the tenants, however, the tenants denied having received such a notice. The parties were advised that the 1 Month Notice was not before me and, therefore, would not be considered as part of my Decision.

Issues to be Decided

- Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be cancelled?
- Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement?
- Should the landlords' right to enter the rental unit be suspended or have conditions imposed?

Background and Evidence

The parties agree that a month to month tenancy began on December 6, 2010. According to a written tenancy agreement, the parties agree that monthly rent of \$1,350.00 is due on the first day of each month. A security deposit of \$675.00 was paid by the tenants at the start of the tenancy.

According to the parties, the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") dated July 31, 2012 and served in person at the rental unit on August 6, 2012. On the Notice, the landlords stated the following 2 reasons as:

1. 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, and,
2. The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenants applied for dispute resolution within 15 days in accordance with the *Act* on August 9, 2012.

Counsel for the landlords was asked whether the landlords provided any evidence as to permits and approvals required by law. Counsel for the landlords stated that they did not have such permits or approvals and were, therefore, withdrawing that aspect of the Notice, and were relying solely on the first reason on the Notice. Counsel for the landlords then affirmed that the landlords intend to demolish the rental unit.

The agent for the tenants stated that the tenants requested the landlords be reminded about the landlords' obligations with respect to the tenant's rights to quiet enjoyment

and the requirements in the *Act*, related to prior written notice before the landlords can enter the rental unit. The agent for the tenant requested 48 hours written notice so that she, as the tenants' power of attorney, could respond to such requests.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Counsel for the landlords stated during the hearing that the landlords wished to rely solely on reason for the Notice as the rental unit being occupied by the landlords or the landlords' spouse or a close family member (father, mother, or child) of the landlord or the landlords' spouse. Immediately afterwards, counsel for the landlords contradicted his testimony by affirming that the landlords intend to demolish the rental unit. As a result, **I find** that the reasons as stated in the Notice were not made in good faith and lack sufficient evidence to support the Notice. Therefore, **I cancel** the Notice dated July 31, 2012. **I order** the tenancy continues until ended in accordance with the *Act*.

The agent for the tenants requested that the landlords be reminded of the tenants' right to quiet enjoyment and the requirement for written notice by the landlord before entering the rental unit. For the benefit of both parties, I am including both sections in my Decision.

Section 28 of the *Act* states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 of the *Act* states:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Given the above, I remind the landlords to comply with sections 28 and 29 of the *Act*. The landlords are cautioned that the tenants may be entitled to compensation in the future if the landlord have breached the *Act*, regulation or tenancy agreement regarding these or other provisions of the *Act*, regulation or tenancy agreement.

The request of the agent for the tenants for the landlords to provide 48 hours written notice is **dismissed**. The parties were advised that section 29 of the *Act* sets the limits on the landlords' right to enter the rental unit.

Conclusion

I cancel the Notice dated July 31, 2012.

I order the tenancy continues until ended in accordance with the *Act*.

I have included sections 28 and 29 of the *Act* for the benefit of both parties.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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: September 11, 2012

Residential Tenancy Branch