



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to section 49 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

The landlord gave undisputed sworn testimony that she handed the tenant the 2 Month Notice on October 1, 2012. The landlord confirmed that on October 22, 2012, she received a copy of the tenant's dispute resolution hearing package sent by regular mail. I am satisfied that both parties received the above documents and one another's written evidence package in sufficient time to enable them to prepare for and to participate in this hearing.

The landlord made an oral request at the hearing for an end to this tenancy on the basis of the 2 Month Notice and requested an Order of Possession if the tenant's application were dismissed.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that the parties entered into a tenancy agreement in January 2008. She said that the tenant was to take occupancy of this rental unit by March 1, 2008. The tenant testified that he took occupancy of this rental unit in a multi-unit rental building by the last week of January 2008 or the first week of February 2008. Monthly rent is currently set at \$715.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$350.00 security deposit paid on or about January 23, 2008.

The landlord's 2 Month Notice, entered into written evidence by the tenant, identified the following reason for seeking an end to this tenancy by December 31, 2012:

- *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property...*

The landlord and her husband are both 77 years old. The landlord entered written evidence from medical health care professionals regarding the couple's health conditions. Although the female landlord has had major health problems over the past six to eight years, her doctor noted that she has continued to manage as the sole caretaker of this rental property. Based on the couple's advancing age and their increasing health problems, their family doctor noted the following in a letter entered into written evidence by the landlord:

...This 77-year-old couple require the rent from this multi-unit property as it represents their primary retirement income. However, it is now necessary for them to have a full-time on-site caretaker to maintain their property and protect this essential income. The Ps need to focus on their health needs to prevent or lessen further health deterioration. Denying such caretaker support will likely lead to further health problems and/or the loss of this vital family business and retirement income.

The landlord gave sworn testimony that she has a potential caretaker recruited to live in the tenant's rental unit. However, she noted that it may take a month or perhaps two to clean the rental unit to a level where the caretaker can commence occupancy of the rental unit. She noted that she allowed three months instead of the standard two months to the tenant so that he could find alternate accommodations. The landlord submitted undisputed written evidence to support her claim that the rental unit occupied by the tenant is the logical rental unit to use as the caretaker's unit. This is due to its proximity to the adjacent utility room, the furnace and hot water tank, meter room, ground floor access to both the front and back of the property, and in-suite access to the watermain shut-off valve for the entire building.

Both parties testified that they understood that the *Act* allowed the tenant to remain in the rental unit for the last month of the tenancy without paying rent as a result of the landlord's issuance of the 2 Month Notice.

For his part, the tenant maintained that it would be very difficult for him to find a suitable rental unit. He submitted a copy of a September 27, 2012 decision of another Dispute Resolution Officer in which the landlord's 1 Month Notice to End Tenancy for Cause of August 18, 2012 was cancelled and set aside. The tenant also testified that the landlord had already hired a "handyman" who conducted many of the functions required in the rental property. The tenant testified that he did not understand why the handyman could not perform additional duties if the landlord were hospitalized for a period of time

for scheduled surgeries or procedures. The landlord said that this individual was only hired in late August 2012. The tenant testified that the handyman has been working at the rental building since July 2011.

Analysis

Section 49 of the *Act* reads 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,...

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith,...

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;...

The timing of the landlord's 2 Month Notice, coming as it did a few days after she failed in her attempt to end this tenancy for cause is of some concern. However, based on the sworn oral testimony and the written evidence presented by the parties, I accept the landlord's assertion that she does intend in good faith to convert the tenant's rental unit for use by a caretaker. The landlord has submitted sufficient evidence to demonstrate the need for a live-in caretaker who can look after this rental property as she and her husband cope with advancing age and health challenges. I also accept the landlord's undisputed evidence that the suite she has identified for caretaker use is suitable for this purpose. I accept the landlord's evidence that she has identified a caretaker who will take up residence in this rental unit. Given the advanced age of the landlord and her husband and their ongoing health challenges, I find that the tenant's application has failed to demonstrate that there is an absence of good faith in the landlord's issuance of the 2 Month Notice. For these reasons, I dismiss the tenant's application to cancel the 2 Month Notice.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the 2 Month Notice were dismissed. As the tenant's application to cancel the 2 Month Notice has been dismissed, I find that this tenancy ends by 1:00 p.m. on December 31, 2012. I issue an Order of Possession to the landlord to be used if the tenant does not vacate the rental unit in accordance with the 2 Month Notice.

Conclusion

I dismiss the tenant's application to cancel the 2 Month Notice without leave to reapply. In accordance with section 55(1) of the Act, the landlord is provided with a formal copy of an Order of Possession to take effect by 1:00 p.m. on December 31, 2012. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: November 08, 2012

Residential Tenancy Branch

