



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, OPT, FF / OPL

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of the landlord's notice to end tenancy for landlord's use of property / an order of possession / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony. During the hearing the landlord confirmed the wish to obtain an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

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

Background and Evidence

As documented in a previous decision in a dispute between these parties by date of November 27, 2012 (file # 799970), the tenancy began in May 2005. Monthly rent of \$1,750.00 is due and payable in advance on the first day of each month. There is no evidence that a security deposit was collected. The unit was sold by the original landlord to the current landlord in July 2012.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated November 27, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is February 28, 2013, and 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.

The notice was served by way of delivery to the tenant's mail box on November 27, 2012. The tenant filed an application to dispute the notice on December 12, 2012. The

tenant's principal objection to the notice arises out of his claim that the home to which he plans to relocate will not be available until September 2013. Despite this, the landlord asserted his wish to obtain possession effective February 28, 2013.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property dated November 27, 2012. As the notice was served by way of delivery to the tenant's mailbox on that same date (November 27, 2012), pursuant to section 90 of the Act which speaks to **When documents are considered to have been received**, I find that the notice was received by the tenant three (3) days later on November 30, 2012.

As the tenant filed his application to dispute the notice on December 12, 2012, pursuant to section 49(8) of the Act, as above, I find that his application was filed within the fifteen (15) day period available for doing so after receiving the notice on November 30, 2012.

Further, I am satisfied that the landlord's stated purpose for issuing the notice reflects honesty of intention, with no ulterior motive. Accordingly, all aspects of the tenant's application are hereby dismissed, and I find that the landlord has established entitlement to an order of possession.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Thursday, February 28, 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: January 17, 2013