



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL FF

Introduction

The tenant applied under the *Residential Tenancy Act* (the “Act”) to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property.

The tenant and landlords attended the hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me.

The tenant confirmed receiving the evidence from the landlords and that he had the opportunity to review that evidence prior to the hearing. The tenant stated that he filed evidence including the 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”) and some letters, however the evidence was not received by the Residential Tenancy Branch, and according the landlords, the 2 Month Notice was not served in the tenant’s evidence, however there was verbal agreement on the content of the 2 Month Notice. As a result, the tenant was provided the opportunity to present his evidence orally during the hearing.

Issue to be Decided

- Should the 2 Month Notice to End Tenancy for Landlord’s Use of Property be cancelled?

Background and Evidence

A six-month fixed term tenancy began on September 1, 2012 and reverted to a month to month tenancy after February 28, 2013. Monthly rent in the amount of \$875.00 is due on the first day of each month. A security deposit of \$435.00 and a pet damage deposit of \$200.00 was paid by the tenant at the start of the tenancy.

The tenant confirmed that he was served on March 5, 2013 with the 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 5, 2013. The effective vacancy date on the 2 Month Notice is listed as May 31, 2013. The tenant disputed the 2 Month Notice on March 15, 2013 which was within the allowable time limitation under the Act of 15 days. Page two of the 2 Month Notice indicates the reason as "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 tenant indicated that he was disputing the 2 Month Notice because he did not believe the landlords were moving in to the rental unit. The landlords testified that they intend to both live in and store items in the rental unit for at least six months. The landlords submitted photos and quotes supporting that they plan to store their items in and otherwise occupy the rental unit.

The tenant stated that he does not believe the landlords due to him being verbally offered a one year lease prior to signing a six month lease, which then reverted to a month to month tenancy after February 28, 2013.

The landlords made a verbal request for an order of possession during the hearing.

Analysis

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

2 Month Notice to End Tenancy for Landlord's Use of Property – The tenant disputed the 2 Month Notice by stating that he did not believe the landlords were going to move into the rental unit. The reason indicated on the 2 Month Notice is "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 landlords testified that they will be living in and storing items in the rental unit for at least six months.

As the reason indicated in the 2 Month Notice includes that the rental unit will be occupied by the landlord, I have referred to the Black's Law Dictionary sixth edition for the legal meaning of the word "occupy".

*Occupy. To take or enter upon possession of; **to hold possession of**; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.*

[Emphasis added]

The word occupy does not require the landlords to move from their current living space, into the rental unit, but does require that the landlords hold possession of and keep for us the rental unit for their use. Therefore, I find the landlords have met the definition of occupy as defined in the Black's Law Dictionary as the landlords have testified under oath and provided photos and quotes that support that the landlords will be occupying the rental unit by at the very least, storing items in the rental unit and undergoing renovations in the rental unit.

The tenant's testimony that a verbal agreement regarding a one year lease is not relevant to this dispute, as the parties agreed that a six month lease was signed by the parties, and not a one year lease. Furthermore, a verbal tenancy agreement does not supersede a written tenancy agreement which in the matter before me was a six month lease that reverted to a month to month tenancy after February 28, 2013.

Based on the above and on the balance of probabilities, **I find** that the landlords have met the burden of proof and **I find** the 2 Month Notice issued by the landlords to be valid. **I dismiss** the tenant's application to cancel the Notice and **uphold** the 2 Month Notice issued by the landlord with an effective vacancy date of May 31, 2013. The landlords verbally requested an order of possession during the hearing. Section 55 of the *Act* states:

Order of possession for the landlord

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.**

[emphasis added]

Given the above and taking into account the landlords oral request for an order of possession during the hearing, **I find** that the landlords are entitled to an order of possession effective **May 31, 2013 at 1:00 p.m.**, which is the effective date on the 2 Month Notice. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that court.

As the tenant's application did not have merit, **I do not grant** the tenant the recovery of the filing fee.

Settlement Agreement

During the hearing, the parties agreed to the following:

1. As the landlords are required under section 51 of the *Act* to compensate the tenant with the equivalent of one month's rent after issuing a 2 Month Notice, the parties agree that the tenant **will not be required to pay rent for the month of May 2013** as compensation pursuant to section 51 of the *Act*.

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*.

Conclusion

I dismiss the tenant's application to cancel the 2 Month Notice. I uphold the 2 Month Notice issued by the landlords.

I grant the landlords an order of possession effective May 31, 2013 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The parties agreed that the tenant will not be required to pay rent for the month of May 2013 as compensation under section 51 of the *Act* as they issued a 2 Month Notice to the tenant. I order the parties to comply with their settled agreement described above.

This decision is final and binding on the parties, unless 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: April 11, 2013

Residential Tenancy Branch

