



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution made by the tenant to cancel a One Month Notice to End Tenancy for Cause.

Both landlords and the tenant attended the hearing. However, only one landlord and the tenant gave affirmed testimony. Both parties were given the opportunity to cross examine each other on the evidence provided.

The tenant served each landlord with a copy of the application and Notice of Hearing documents on May 27, 2013 and an amended copy of the application on June 3, 2013. Both landlords confirmed receipt of the original and amended documents. Based on this, I find that the landlords have been served in accordance with the *Residential Tenancy Act*.

All the affirmed testimony of both parties during the hearing and the prior evidence submitted have been carefully considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to cancel the One Month Notice to End Tenancy for cause issued by the landlord?

Background and Evidence

Both parties agreed that the tenancy started on October 1, 2012 on a month-to-month basis. Rent in the amount of \$950.00 is payable by the tenant on the first day of each month and the landlord collected a security deposit from the tenant on October 5, 2012 in the amount of \$475.00.

The landlord testified that kitchen facilities, including a stove, had been added to the basement suite after the property was bought so that they could rent it out. However, the Regional District of Okanagan Similkameen (RDOS) inspected the rental suite on April 26, 2013 and the Building Official indicated verbally that the suite was an illegal unit and that the landlord would receive a notice of this in the mail in three weeks time.

The landlord testified there was concern because the report had not arrived and as a result on May 21, 2013 the landlord issued the tenant with a One Month Notice to End Tenancy for Cause without receiving the formal notice from RDOS, to try and give the tenant enough time to vacate the unit. When the landlord eventually received the written report on May 28, 2013 from RDOS, the landlord re-served the same notice to end tenancy, but with the corrected date of May 28, 2013, and served this to the tenant by hand the following day. The expected date of vacancy on both notices is June 30, 2013.

On both notices to end tenancy, the reason provided for ending the tenancy was due to the fact that the 'Rental unit/site must be vacated to comply with a government order.' As a result the letter from the RDOS, dated May 27, 2013, states that the landlord is required to either apply for a building permit to legitimize the suite or remove the kitchen to decommission the suite by July 15, 2013.

The landlord testified that they cannot apply for a permit in order to do work that will legitimize the rental unit because this would cost too much money and would involve significant renovations to the unit. The landlord further testified that legitimizing the unit would involve extensive electrical work which would not be safe to do as both the landlord and tenant have children residing in the property. The landlord stated that they intend to comply with the Bylaws quoted in the letter issued by the RDOS by removing the kitchen in order to decommission the suite.

The tenant testified that she accepted both notices to end tenancy which were received on May 21 and May 29, 2013. The tenant expressed frustration in the fact that the tenancy was being ended because the landlord had failed to get the required permission and do the required repairs before the tenancy began. The tenant stated that the notice issued by RDOS did not specifically state that she was required to leave and the tenant stated in her written submissions that she had enquired directly with the RDOS who informed her that notices asking tenants to vacate a unit are not issued by the RDOS. As a result the tenant now applies to have this notice to end tenancy cancelled.

Analysis

The tenant testified that both copies of the One Month Notice to End Tenancy for Cause served by the landlord by hand on May 21 and May 28, 2013 were received on May 21 and May 29, 2013 respectively. Based on this I find that the notices to end tenancy were served to the tenant in accordance with the *Act*.

Having examined the notice issued by RDOS in detail, it is clear that the current suite was built without the required permits and is considered an illegal use and the landlord has two options:

1. Apply for the building permit in order to legalize the suite OR
2. Remove the kitchen in order to decommission the suite.

The landlord testified that they would not be applying for the building permit as this would involve significant cost in getting electrical work completed to bring the suite up to the municipal building code. In addition, the landlord stated that action will be taken to remove the kitchen in order to decommission the suite and comply with the RDOS Bylaws quoted in the letter.

In my analysis I find that, if the landlord takes no action at all, then the suite is still considered illegal and not in compliance with municipal Bylaws. If the action testified by the landlord is carried out in decommissioning the suite, then this will result in the secondary suite having no kitchen facilities.

However, I find that neither of these grounds is sufficient for me to uphold the notice to end the tenancy because if the landlord intends to decommission the suite, then the tenancy is still in existence albeit the tenant will be without kitchen facilities. If the landlord takes no action, then this would then be an issue between the landlord and the RDOS. The tenant questioned the notice, claiming that it does not specifically state that the tenant has to vacate the unit; I find this to be the case, that the RDOS letter is asking for the landlord to comply with the Municipal Bylaws and does not ask for the tenant to leave the unit.

Pursuant to Section 32 of the *Act*, the landlord was required to supply and maintain a rental unit that complies with the housing standards required by law. I find the landlord breached the *Act* by not supplying the tenant with a legal suite. As a result, I find that the landlord is attempting to end the tenancy due to their own breach of the *Act*, albeit this breach may not have been intentional.

However, I would caution the landlord that if the landlord intends on moving forward with decommissioning of the rental unit then this situation maybe more appropriately dealt with under Section 49(5)(f) of the *Act* with a Two Month Notice to End Tenancy for Landlord's Use of Property. I also remind the landlord in regards to their obligations under Section 27 of the *Act* in providing essential services to the tenant.

Conclusion

For the reasons set out above, I cancel the One Month Notice to End Tenancy for Cause issued by the landlord to the tenant on May 21 and the one issued on May 29, 2013.

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: June 18, 2013

Residential Tenancy Branch