



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF
OPL

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a notice to end tenancy for landlord's use of property / and recovery of the filing fee. Both parties attended and gave affirmed testimony. During the hearing the landlord confirmed that an order of possession is sought 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

The unit which is the subject of this dispute is located in the basement portion of a house. The landlord resides in the upper portion of the house.

Pursuant to a tenancy agreement, a copy of which is not in evidence, the month-to-month tenancy began on July 1, 2013. Monthly rent of \$700.00 is due and payable in advance on the first day of each month. A security deposit of \$350.00 was collected.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated October 31, 2013. The notice was served in-person on November 1, 2013. A copy of the notice was submitted in evidence. The date shown by when the tenant must vacate the unit is December 31, 2013, with the reason identified in support of its issuance 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 tenant filed an application to dispute the notice on November 15, 2013.

Through the family member assisting him, the landlord testified that his parents who presently reside with him in the upper portion of the house, will move into the basement unit after such time as this tenancy ends.

Analysis

Section 53 of the Act addresses how **Incorrect effective dates automatically changed**. Pursuant to this section, even while the 2 month notice is dated October 31, 2013, as it was served on November 1, 2013, I find that its effective date is January 31, 2014, rather than December 31, 2013.

Section 49(3) of the Act provides as follows:

49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Further, Residential Tenancy Policy Guideline # 2 speaks to “Good Faith Requirement when Ending a Tenancy,” in part:

GOOD FAITH REQUIREMENT

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

Based on the documentary evidence and testimony, I find on a balance of probabilities that the landlord has proven a good faith intent that his parents will move into the subject unit after such time as this tenancy ends. Accordingly, the tenant’s application to cancel the 2 month notice is hereby dismissed, and I find that the landlord has established entitlement to an **order of possession**. As the tenant has not succeeded with the main aspect of his application, the application to recover the \$50.00 filing fee is also hereby dismissed.

Section 49 of the Act addresses **Tenant’s compensation: section 49 notice**. In summary, a tenant who receives a 2 month notice “is entitled to receive from the landlord on or before the effective date of the landlord’s notice an amount that is the equivalent of one month’s rent payable under the tenancy agreement.” During the hearing the tenant testified that he has not presently paid any rent for January 2014.

Accordingly, pursuant to the provisions of section 49, I find that rent for January 2014 is deemed to have been paid.

As the end of tenancy nears, the attention of the parties is drawn to section 37 of the Act which addresses **Leaving the rental unit at the end of a tenancy**:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Further, the parties are referred to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Conclusion

The tenant's application is hereby dismissed.

I hereby issue an **order of possession** in favour of the landlord effective not later than **Friday, January 31, 2014**. 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 08, 2014

Residential Tenancy Branch

