



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL; FF

Introduction

This Hearing was scheduled to determine the Tenant's Application for Dispute Resolution filed November 27, 2013, seeking to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Rental Property* issued November 13, 2013 (the "Notice"); and to recover the filing fee from the Landlords.

At the start of the Hearing I introduced myself to the participants, explained the hearing process and provided the parties an opportunity to ask questions about the hearing process. The parties were provided the opportunity to submit documentary evidence prior to the hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The Tenant (BG) testified that he sent the Notice of Hearing documents, via registered mail, to the Landlords on November 28, 2013. The male Landlord (AM) acknowledged receipt of the documents.

It was determined that the parties exchanged their documentary evidence.

I have considered all testimony and documentary evidence provided.

Preliminary Matters

A copy of the Notice was provided in evidence. AM testified that he issued the Notice on November 13 and not on November 15, 2013, as provided on the Notice. BG stated that he received the Notice in his mail box on November 13, 2013. Therefore, I amended the Notice to reflect that it was issued on November 13, 2013.

Issue(s) to be Decided

- (1) Should the Notice be cancelled?

Background and Evidence

The Notice provides the following reason for ending the tenancy:

- 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.

AM stated that he is a 73 year old cancer patient. AM testified that he currently lives in a house with 26 stairs. He stated that his left leg, from the hip down, has limited mobility and that he fell in mid September, 2013. AM testified that the fall damaged his lower back. AM fell again 2 weeks later and for a third time during the first week of November, 2013. AM testified that he was advised by his doctor that he should move to a place with only one floor.

AM provided the following documents in evidence:

- A copy of his parking permit for mobility impaired persons
- Copies of appointment notices for a pain management clinic
- A copy of a "Patient Information" for Epidural Steroid Blocks
- A copy of "Instructions and Long Pain Diary"
- A letter from AM's doctor.

The letter from AM's doctor indicates, "[The Landlord] has a significant mobility issues and needs to live in a single story house. Living in a house with stairs puts him at increased risk of having a fall causing a fracture." (Reproduced as written).

BG stated that he was surprised to receive the Notice. He stated that he had been given notice that his rent was going to increase by 17%. BG testified that he told AM that he could not afford that much. BG stated that he wrote a letter to the Landlords on October 28, 2013, advising that the Residential Tenancy Act does not allow increases as high as 17% and that he would agree to a 5% increase. BG submitted that the Landlords want to end the tenancy so that they can re-rent the rental unit for more money.

BG stated that the Landlords have other rental units that they could move into.

BG stated that the letter from AM's doctor was not dated. He questioned when it was written.

AM stated that the doctor gave him the letter on January 6, 2014.

BG testified that his wife is due to have a baby, by caesarian section, on January 30, 2014. He stated that under these circumstances, it would be a great hardship if not impossible for him to move at the end of January, 2014.

AM submitted that he gave BG 2 ½ months notice of his intent to move back into the rental unit and that BG should have had sufficient time to make arrangements to move.

AM requested an Order of Possession effective January 31, 2014.

Analysis

In an application such as this, where a landlord has issued a Notice to End Tenancy for Landlord's Use of Property, the burden is on the landlord to establish that he truly intends to do what he indicated on the Notice to End Tenancy. When the tenant has called into question the landlord's motive for issuing the Notice, the landlord must also establish that he does not have an ulterior motive for ending the tenancy as his primary motive. This must be established on the civil standard, the balance of probabilities.

The Landlords' documentary evidence indicates that he has mobility issues. The doctor's letter also confirms that AM has been advised to move to a one storey dwelling to minimize risk of future falls. Based on AM's affirmed testimony and the documentary evidence provided, and on the balance of probabilities, I am satisfied that the Landlords intend to move into the rental unit. I am also satisfied that this is their primary motive for ending the tenancy. Therefore, the Tenant's application to cancel the Notice is **dismissed**.

During the Hearing the Landlord asked for an Order of Possession. Further to the provisions of Sections 55 and 68(2) of the Act, I hereby provide an Order of Possession to the Landlord effective at **1:00 p.m., February 28, 2014**.

During the Hearing, the Tenant stated that he was aware of the compensation equivalent to one month's rent allowed under Section 51(1) of the Act.

Both parties are hereby advised of the provisions of Section 51(2) of the Act, which states:

Tenant's compensation: section 49 notice

- 51 (2) In addition to the amount payable under subsection (1), if
- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The Tenant has not been successful in his application to cancel the Notice and therefore I order that the Tenant bear the cost of the filing fee.

Conclusion

The Tenant's application to cancel the *2 Month Notice to End Tenancy for Landlord's Use of Property*, issued November 13, 2012, is dismissed.

The Landlord is provided with an Order of Possession effective **1:00 p.m., February 28, 2014**. This Order must be served on the Tenant and 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 22, 2014