



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0588848 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of a conference call in response to an application made by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of this application.

The tenant and two agents for the landlord appeared for the hearing and no issues in relation to the service of documents in accordance with the *Residential Tenancy Act* (referred to as the "Act") were raised by any of the parties. The parties also confirmed receipt of each other's documentary evidence which was submitted prior to the hearing.

While I have considered all the documentary evidence submitted prior to the hearing, not all details of the respective submissions and arguments are referred to in my decision.

At the start of the hearing, one of the landlord's agents (LC) stated that he was recording the hearing. I asked LC to turn off his recording equipment as this was not permitted under Rule 9.1 of the Residential Tenancy Branch (RTB) Rules of Procedure.

Rule 9.2 of the RTB Rules of Procedure sets out the specific requirements a party has to follow prior to a dispute resolution hearing taking place. This requires advance written request by the party to the RTB to have a court reporter record the proceedings and provide an official transcript of the hearing. The landlord's agent confirmed, under affirmation, that his recording equipment had been turned off and I informed both parties that they would be sent a written decision relating to this hearing.

Issue(s) to be Decided

- Is the tenant entitled to cancel the notice to end tenancy?

Background and Evidence

Both parties agreed that this month to month tenancy started on June 1, 1998. A written tenancy agreement was completed and provided as evidence for this hearing. The tenant paid \$240.00 in rent to the landlord at the start of the tenancy and, through a number of rent increases, the tenant currently pays rent in the amount of \$671.00 on the first day of each month.

Both parties agreed that the tenant was personally served with a 2 Month Notice to End Tenancy for Landlord's Use of Property on November 29, 2013. The notice which was provided as evidence is dated November 26, 2013 and shows that the reason for ending the tenancy is, *'the family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares'*. The effective date of the notice to vacate the rental suite is January 31, 2014.

The landlord's agent (WG) testified that the reason for serving the notice to end tenancy is because they need the tenant's rental suite to conduct their business. WG testified that the rental suite is a two bedroom suite that has plenty of windows that allow for a panoramic view; this will allow the landlord to entertain business clients who visit the location from all over the world and that the tenant's rental unit will become the registered office for their business. When questioned about the significance of the two bedrooms, WG testified that one of the bedrooms will be used to sleep in at night. WG testified that the building does not have a party/function room and therefore the tenant's rental suite is required to perform this function.

The tenant disputes the notice to end tenancy and in her written submission she states that the landlords have other units which they can use to perform the same function. WG denied this and stated that these other suites have been renovated and will be rented out in the near future.

During the hearing, I questioned the landlord's agent (LC) regarding the landlord's principal use of the tenant's rental suite and when I questioned him about the fact that the rental suite was going to be intended for use as business premises, LC became frustrated during the hearing and stated that the process was "bullshit" and that he would be complaining to the government ministry through his lawyer. I cautioned the LC about his inappropriate language before moving on with the proceedings.

The landlord relied on a large amount of documentary evidence which mainly centers on the alleged problems caused by the tenant such as hoarding, bullying, harassment, unauthorized pets and how unclean the tenant's suite is. When I explained to LC that

there are other remedies available under the Act to deal with these issues, LC became further frustrated explaining that he had already served the tenant with a notice to end tenancy for cause but this had been cancelled by an Arbitrator during a previous hearing because the RTB had not completed fire inspections and other relevant investigations into these matters. I explained to LC that the RTB was not responsible for conducting investigations and gathering evidence on behalf of the parties for dispute resolution hearings.

I attempted to settle the matter between the parties under section 63 of the Act but neither party was willing to engage in a discussion around the ending the tenancy.

Analysis

Section 49(8) of the Act states that a tenant may dispute a 2 Month Notice to End Tenancy for Landlord's Use of Property by making an Application for Dispute Resolution within 15 days after the date the tenant receives it.

The tenant's undisputed testimony indicates that the notice to end tenancy was served to her personally on November 29, 2013. The tenant made the application to dispute the notice on December 9, 2013. Therefore, I find that the tenant made the application within the allowable time limits stipulated by the Act. I also find that the content of the notice and the manner in which it was served complied with the Act.

In my consideration of the notice to end tenancy, section 49(4) of the Act states that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owing voting shares in the corporation, or a close family member of that person, intends in **good faith to occupy** the rental unit.

The landlord provided no supporting evidence to show that the tenant's rental unit will be occupied by a family member and I find that based on the undisputed testimony of the landlord agents that the tenant's rental unit is intended to be used primarily for a non-residential use of the property, namely business purposes. It is worth noting that the Act **does** provide that a tenancy can be ended if the landlord requires the property for a non-residential use and that this requires a good faith intention and not an ulterior motive to end the tenancy. However, as the tenant pointed out, this is not the reason indicated on the notice to end tenancy served to her by the landlord which she is disputed in this hearing.

In addition, based on the documentary evidence provided by both parties, the landlord's agents allege that there were a multitude of problems created by the tenant before the

notice to end tenancy for landlord's use of the property was served to the tenant. As a result, I am not satisfied by the landlord's evidence that the notice to end tenancy has been served to the tenant in good faith. Policy Guideline 2 to the Act states:

“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.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.”

[Reproduced as written]

I find that the testimony and evidence indicates that when the landlord was unsuccessful in trying to end the tenancy with the previous notice to end tenancy for cause, the landlord sought to end the tenancy using the notice to end tenancy for landlord's use of the property as an ulterior way of terminating the alleged problems being caused by the tenant. I find that this course of action does not satisfy the requirements of the Act. However, there may be other appropriate remedies available to the landlord under the Act to deal with the issues presented at this hearing. As a result, the landlord is advised to speak to an Information Officer at the RTB or seek independent legal advice on these issues.

As the landlord has failed to provide sufficient evidence that the tenant's rental unit is required for the purposes stipulated on the notice to end tenancy, I find that the notice must be cancelled.

Conclusion

For the reasons set out above, I hereby cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 26, 2013. The tenancy will continue until it is ended in accordance with the Act.

As the tenant has been successful in cancelling this notice, I award the tenant \$50.00 for the cost of this application pursuant to Section 72(1) of the *Act*. The tenant may recover this cost by deducting \$50.00 from her March, 2014 rent payment.

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 31, 2014

Residential Tenancy Branch

