



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 667707 BC LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking to cancel the landlord's Two-Month Notice to End the Tenancy for Landlord's Use dated April 30, 2014, purporting to be effective June 30, 2014. The Notice is based on the landlord's stated intent to convert the use of the tenant's suite by a caretaker, manager or superintendent of the residential property.

Both the landlord and the tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

In addition, two other residents in the complex, who also received a Two Month Notice to End Tenancy for Landlord's Use were also in attendance. Their request to join their separate applications to cancel their own Two Month Notices to End Tenancy for Landlord's Use with this one, to be heard at the same hearing is granted and each of the 3 applications will be dealt with in sequence at this hearing.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be cancelled as requested by the tenant?

Background and Evidence

The tenant submitted into evidence a copy of the Two-Month Notice to End Tenancy indicating that *"The landlord intends to convert the rental unit for use by a caretaker, manager or superintendant of the residential property."*

The tenant raised the issue of bad faith and stated that Two Month Notice to End Tenancy so that the landlord's caretaker's could live in the suite had previously been issued to other former residents, who accepted the Notice and vacated. The tenant testified, that most recently this same Notice was served on the tenant and two other renters now living in the complex, all of whom *do not* accept the termination and are therefore disputing their 2-Month Notices.

The tenant testified that this is the latest of many persistent attempts by the landlord to terminate their tenancies. According to the tenant, the landlord had pressured the tenants trying to convince them to sign a new fixed term agreement, which they each had declined to do. The tenant testified that the landlord had also attempted to persuade the tenants to accept a rent increase that was not compliant with the Act, which they also refused. The tenant pointed out that this 2-Month Notice was clearly issued in bad faith as a retaliatory action against them by the landlord, who is determined to evict them to hike up the monthly rents.

The tenant testified that the landlord's purported reason for issuing the Two Month Notice to End Tenancy for Landlord's Use is obviously not for the purpose stated by the landlord. Seeking to empty 3 units allegedly to house a "caretaker", makes no sense to the tenant. The tenant further testified that the landlord has had other vacant units available that could be offered for use by the landlord's caretaker(s), but these units were rented to new tenants instead.

The tenant testified that the landlord threatened the tenants that, should they refuse to accept the Two Month Notice to End Tenancy for Landlord's Use, they will likely lose their tenancies in any case because the landlord may find it necessary to pursue more drastic measures such as demolition. The landlord cautioned the tenants that all units would then have to be vacated.

The tenant's position is that the landlord has issued the 2-Month Notice in bad faith and it is completely without merit. The tenant is seeking an order to cancel the Notice.

The landlord denied that they issued the Notices in bad faith.

The landlord testified that they have no option but to dedicate 3 suites, including this tenant's suite, for use by their caretakers, which apparently consists of a clean-up or renovation crew. The landlord stated that their contractors will apparently be involved in extensive clean-up and renovation work on numerous suites located in nearby buildings in the complex. The landlord testified that the municipality requires the landlord to improve some of their other rental units as they are below the required standards and are not fit for habitation. The landlord explained that, in order to do the work, they will need to house their tradespersons and equipment on site and these three rental units,

including the tenant's unit, are vitally required for this purpose. The landlord stated that no permits were submitted into evidence because official building permits are not necessary for the type of renovations that must be done.

The landlord's position is that the Two Month Notice to End Tenancy for Landlord's Use is justified under the circumstances and should not be cancelled. The landlord asks that the tenant's application be dismissed and that the landlord be issued an Order of Possession based on the Notice.

Analysis

Under section 49(6)(e) of the Act under, "*Landlord's notice: landlord's use of property*", the Residential Tenancy Act states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith to convert the rental unit for use by a caretaker, manager or superintendant of the residential property.

The tenant has raised the issue of bad faith and asked that the Two Month Notice to End Tenancy for Landlord's Use Dated April 30, 2014 be cancelled.

I find that, in order to refute the tenant's application, the landlord would be required to furnish some evidence to support that a unit is being reserved for a genuine caretaker, manager or superintendant, whose function is to oversee the rental property and provide services to tenants on behalf of the landlord.

I find that a resident manager who lives on site is housed in a building to service both the landlord and the tenants with their tenancy relationships and deal with maintenance issues that may arise concerning the building as it affects the tenants love there.

In this instance, I find that the landlord's use of this ground to terminate these tenancies is misplaced. I do not accept that section 49(6)(e) of the Act considers members of a work crew or individual trades contractors hired by the landlord to do renovation work on the landlord's properties would possibly be defined as a "*caretaker, manager or superintendant of the residential property*".

I find that the landlord appears to be attempting to warp this section of the Act to suite an entirely different purpose than the one anticipated by the legislation. I find that the all of the specific reasons for terminating a tenancy are contained in the Act and a landlord has no right to evict tenants for any purpose other than those specified under the Act.

I find that, merely describing a clean-up or renovation crew as "*caretakers*" in order to fit the criteria aimed at justifying a Two Month Notice to End Tenancy for Landlord's Use

under section 49(6)(e) of the Act, will not succeed, particularly if such Notices are served on multiple tenants, as in this case.

I find that section 5(1) of the Act states that the Act cannot be avoided landlords or tenants, and that any attempt to avoid or contract out of the Act or the regulations is of no effect.

In the matter before me, I find that the landlord has not sufficiently met the burden of proof to validate the Two Month Notice to End Tenancy for Landlord's Use.

Accordingly, it is my determination that the 2-Month Notice to End Tenancy for Landlord's Use dated April 30, 2014, has no merit and must be cancelled.

I hereby order that the Two-Month Notice To End Tenancy for Landlord's Use dated April 30, 2014 is permanently cancelled and of no force nor effect.

I further order that the tenant be reimbursed for the \$50.00 cost of this application and order the tenant to reduce the next rent payment owed to the landlord by this amount.

Conclusion

The tenant is successful in the application and the Two Month Notice to End Tenancy for Landlord's Use is cancelled.

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 09, 2014

Residential Tenancy Branch

