



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR

Introduction

This hearing dealt with an application by the tenant seeking to have a Two Month Notice to End Tenancy for Landlords Use of Property set aside and to seek an order to have a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities set aside. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is tenant entitled to have either notice set aside?

Background and Evidence

The tenant gave the following testimony:

The tenancy began on or about July 1, 2003. Rent in the amount of \$1750.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$875.00. The tenant stated that he was personally served a Two Month Notice to End Tenancy for Landlords Use of Property on July 30, 2014 with an effective date of September 30, 2014. The tenant stated that the home that he resides in has been sold and that the new owner seeks vacant possession.

The tenant challenges the basis of the issuance of the Notice. The tenant stated that he does not believe the new owners have any intention of moving in. The tenant stated that the new owners are most likely going to build on the property or at least rent “for

whatever amount they can receive". The tenant stated that he has not paid the rent for the past three months. The tenant stated that if he has to move out he wishes to be compensated for the upgrades he's done to the property and will not pay any rent until that time. The tenant stated the new owners have not displayed any good faith and therefore the notice should be set aside.

The landlords' agent gave the following testimony:

The agent stated that the new owner wishes to have vacant possession as per the notice and to occupy the home. The agent stated that the appropriate notice and terms have been met by the landlord and cannot offer any more in terms of evidence as to good faith. The agent stated that the tenant would be entitled to compensation under the Act if the owners do not carry out the terms as stated in the Notice. The agent stated that he believes in the process and that the landlord has abided by it. The agent stated that they seek an order of possession.

Analysis

Neither party provided evidence in regards to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; that issue can be dealt with in a separate hearing as it is not before me and appears that the tenant mistakenly "ticked the wrong box" on his application.

This decision will solely address the 2 Month Notice to End Tenancy for Landlords Use of Property. I asked the tenant on two occasions as to when he was served the Notice. The tenant advised both times that it he was personally served on July 30, 2014. The tenant applied for dispute resolution on August 15; outside of the 15 day legislated time line. When I brought this to the tenants' attention the tenant changed his testimony and said he was served on July 31, 2014 and applied on August 15, 2014 for dispute resolution; within the legislated timeline. The tenant first stated that the 14th of August fell on a Sunday when in fact it fell on Thursday. I do not accept the tenants' second version of the timeline as he was unclear and contradictory to his own testimony. . The

Notice clearly states that if a party wishes to dispute the Notice they must do so within 15 days.

I find that the tenant was served with a notice to end tenancy. The tenant did not apply for dispute resolution within fifteen days to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. The order of possession will take effect two days after service upon 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.

It is worth noting, that even if I was to accept that the tenant had applied within the legislated timeline I was satisfied that the landlord is acting in good faith and would confirm the notice in favour of the landlord.

Conclusion

The 2 Month Notice to End Tenancy for Landlords Use of Property dated July 30, 2014 with an effective date of September 30, 2014 is hereby confirmed. The notice is of full effect and force. The tenancy is terminated.

The tenants' application is dismissed.

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: September 29, 2014

Residential Tenancy Branch

