



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, PSF, OLC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the two month Notice to End Tenancy was sufficiently served on the Tenant on November 5, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a two month Notice to End Tenancy dated November 5, 2014 and setting the end of tenancy for January 31, 2015?
- b. Whether the tenant is entitled to an order that the landlord provide a fire escape access through the garage?

Background and Evidence

The entered into a month to month written tenancy agreement that provided the tenancy would start on July 1, 2014. The rent was \$500 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$250 at the start of the tenancy.

Grounds for Termination

The Notice to End Tenancy relies on section 49(3) of the Residential Tenancy Act. That section 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.

The landlord testified that rental unit was rented to the tenant in the summer when the landlords worked close to home. They now have jobs as a long haul trucker and they were participating in the hearing from Ontario. As a result of their new jobs they are out of the province for extended periods of time.

The respondents are paying a mortgage of \$1000 per month. Their daughter lives locally and she was paying rent of \$1500 per month. Their daughter and her husband have two children. The daughter's husband also has children from a previous marriage. The landlords have reached an agreement with their daughter that the daughter and her family will move into their home and pay the mortgage. This is advantages to landlords as they are not often home. It advantageous to the daughter as it will reduce the amount she and her husband are paying for accommodation. The daughter and her husband need the basement area to house their family and the husband's children when they come on the weekends. The daughter has given notice to end her tenancy arrangement she is presently in. The landlords have moved many of their belongings to a storage facility.

The tenant testified as follows:

- He was lead to believe he could stay in the rental unit for an indefinite period of time.
- He works at a restaurant at a close location. The rental unit gives him access to his work and the education he is taking.
- He is 74 years of age and is happy with the rental arrangement he has with the landlords.

Analysis

After carefully considering the evidence and the submission of the parties I determined the landlord has established sufficient cause to end the tenancy. I determined the landlords intend,

in good faith for their daughter to move into the rental unit. Such an arrangement is advantageous to both parties. The Residential Tenancy Act permits a landlord to end the tenancy on 2 months notice in such a situation. There is insufficient evidence on which I can determine the actions of the landlord had any ulterior motive. While the tenant may not like, the term of the tenancy is month to month and the landlords have the legal right to end the tenancy under section 49 as they have.

The tenant does have rights under section 51 of the Act which provide as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] 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.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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.

Determination and Orders

As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice. I also dismissed the tenant's application for an order that the landlord provide the tenant with a fire escape access through the garage as the landlord has provided that.

Order for Possession

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where a dispute resolution officer has dismissed a tenant's application to set aside a Notice to End Tenancy, the dispute resolution officer must grant an Order for Possession. The landlord made this request at the hearing. As a result I granted the landlord an Order for Possession effective January 31, 2015.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: December 15, 2014

Residential Tenancy Branch

