



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

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 or about March 2, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on March 16, 2015. 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 the two month Notice to End Tenancy dated February 28, 2015?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2010 when the parties entered into a month to month tenancy. The tenant did not pay a security deposit. The tenancy agreement is oral. The present rent is \$1248 per month payable in advance on the first day of each

month. The tenancy agreement provided that the tenant(s) would pay rent of \$1000 per month payable on the first day of each month.

Grounds for Termination:

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

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

(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 he and his wife, in good faith intend to move into the rental unit based on the following:

- He is elderly and is not in good health. He is no longer able to drive and he needs to be in town to access the following:
 - There are several pharmacies close to the rental unit.
 - There is a dentist in the immediate vicinity
 - There is a laundromat close by
 - There is a walk in medical clinic close to the rental unit.
- The landlord and his wife presently live approximately 5 miles out of town in a rural area. They are two miles away from the closest grocery store. There is a park on one side and an empty lot on the other. The closest house is a short distance away but the owner lives in it for a short period of time each month. The landlord testified he is not able to walk the two miles each way to the grocery store.

- He wishes to remain independent for as long as he can and the occupying of the rental unit is necessary to accomplish this.

The tenant disputes much of the landlord's testimony. She testified the place where the landlord presently lives is not in the country. However, she acknowledged that it was about 5 miles from downtown. She stated his present location is closer to the hospital than the rental unit. She further stated the real reason the landlord wants to move in is contained in his letter of February 25, 2015 in which he complained about the tenant's excessive hydro use. The tenant also testified the landlord told her "Nobody can tell me what to do" and he has harassed her.

Analysis:

After carefully considering all of the evidence I determined the landlord has established a good faith intention to move into the rental unit. I am satisfied based on the evidence presented that there are sound reasons for the landlord and his wife to move into town. The landlord is no longer able to drive and thus, being 5 miles from services in town is a major issue for the landlord. The landlord has established he needs to be closer to services. I am also satisfied there is good reason why the landlord and his wife need both rental unit as it is likely that in the near future the landlord will need care assistance. I do not accept the dispute over the hydro means the landlord is not acting in good faith.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end.

The end of tenancy date on the Notice is May 15, 2015. The Residential Tenancy Act provides that where a landlord wishes to end a tenancy on the basis of landlord use the landlord must give the tenant two clear months notice commencing on or before the end

of the rental payment period to be effective at the end of the rental payment period two months hence. The Act self corrects an improperly dated Notice. Thus the end of tenancy date is May 31, 2015. I further order that the application of the tenant for the cost of the filing fee be dismissed.

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 May 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.

As a courtesy to the parties I have included the provisions of section 51 of the Residential Tenancy Act which provides 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.

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: April 20, 2015

Residential Tenancy Branch

