



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, OPB, CNC, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on March 24, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy and for a monetary Order for money owed or compensation for damage or loss. During the hearing the Tenant withdrew the application for a monetary Order.

The female Tenant stated that on March 24, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via express post. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 20, 2015 the Tenant submitted 4 pages of evidence to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The female Tenant stated that these documents were mailed to the Landlord on March 06, 2015. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On March 26, 2015 the Tenant submitted 12 pages of evidence to the Residential Tenancy Branch, which the Tenant intended to rely upon as evidence. The female Tenant stated that these documents were mailed to the Landlord on March 26, 2015, via express post. She was unable to cite a tracking number and no documents were submitted to corroborate this testimony. The Agent for the Landlord stated that this evidence was not received.

As the Landlord did not acknowledge receipt of the documents submitted on March 26, 2015 and the Tenant submitted no evidence to establish that they were received by the Landlord, these documents were not accepted as evidence for these proceedings. The proceedings were not adjourned as a result of this evidence not being accepted, as these documents pertain to the claim for a monetary Order, which has been withdrawn.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession or should the Notice to End Tenancy for Cause be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 01, 2013 and that they signed a fixed term tenancy agreement, the fixed term of which ends in May of 2016. The parties agree that the Tenant agreed to pay monthly rent of \$800.00 by the first day of each month.

The Agent for the Landlord stated that on March 16, 2015 a One Month Notice to End Tenancy was served to the Tenant, by mail. The female Tenant stated that the One Month Notice to End Tenancy was located in the Tenant's mail box on March 16, 2015.

The One Month Notice to End Tenancy, which was submitted in evidence, declares that the Tenant must vacate the rental unit by April 17, 2015. The Notice to End Tenancy declares that the Landlord wishes to end the tenancy because the tenant has breached a material term of the tenancy agreement and has failed to remedy the breach within a reasonable time after receiving written notice to do so from the landlord, and the residential premises must be vacated to comply with an order by a Provincial, regional, or municipal government authority respecting zoning, health, safety, building, or fire prevention standards.

The Agent for the Landlord stated that he does not know why the Notice to End Tenancy declares that the Landlord wishes to end the tenancy because the tenant has breached a material term of the tenancy agreement and has failed to remedy the breach within a reasonable time after receiving written notice to do so from the landlord. He stated that he does not know what this refers to and that the Landlord simply wishes to end the tenancy in order to comply with a municipal order regarding zoning.

Both parties submitted a copy of a letter from the building inspector in this community, dated March 13, 2015. In the letter the building inspector declares, in part:

- that the rental unit is a "two family house" which is being rented as a "four family dwelling";
- that the zoning for the property is R2, which allows for single and two family dwellings only; and
- that the Landlord must "bring your property into compliance" by May 01, 2015.

The Witness for the Tenant stated that he is the building inspector that wrote the aforementioned letter. He stated that the Tenant told him four families were living in the residential complex. He stated that he looked through the basement windows of both sides of this duplex but the blinds were closed so he could not see kitchen facilities. He stated that based on information provided to him by the Tenant and what he could see through the windows, he determined that four families were occupying the residential premises.

The Witness for the Tenant stated that on March 16, 2015 he spoke with a female representative for the Landlord and that he made notes of that conversation. He stated that he told the representative that the two basement suites did not comply with zoning bylaws and that they would have to be vacated. He stated that he did not specifically declare in his letter of March 13, 2015 that the basement suites needed to be vacated because he was trying to "keep it simple".

The Agent for the Landlord agrees that the building inspector told a representative for the Landlord that both sides of the duplex need to be converted to single family dwellings. He stated that in March of 2015 one side of the duplex was already being used as a single family dwelling. He stated that the upstairs of the other side of the duplex was being occupied by the Tenant and the downstairs of that side of the duplex was being occupied by a second renter.

The Agent for the Landlord stated that as a result of receiving the letter from the building inspector the Landlord asked the renter living below the Tenant to move out. He stated that they mutually agreed to end the tenancy at the end of April of 2015. He stated that on April 29, 2015 this renter told him that he has vacated the rental unit.

The Agent for the Landlord acknowledged that since the suite below the rental unit has been vacated, the Landlord is now in compliance with the building inspector's direction to comply with zoning bylaws.

The Agent for the Landlord stated that the Landlord is willing to allow the Tenant to continue to live in the rental unit, providing the Tenant is willing to pay additional rent for the lower portion of the duplex. The female Tenant stated that they do not wish to occupy the lower portion of the duplex.

Analysis

Section 47(1)(k) of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional, or municipal government authority.

I find that the letter from the building inspector, dated March 13, 2015, does not specifically declare that the rental unit or the suite below it must be vacated. The letter simply orders the Landlord to comply with zoning bylaws by May 01, 2015 and advises the Landlord that she may be subject to penalties if she fails to comply. Rather than vacating either suite, the option of applying for a variance appears open to the Landlord, albeit that option may involve financial penalties if a variance cannot be obtained in a timely manner.

On the basis of the testimony of the Witness for the Landlord, I find that the building inspector verbally advised a representative for the Landlord that the suite below the rental unit must be vacated. Although this was not conveyed to the Landlord in writing, I find it reasonable to conclude that the Landlord had been ordered to vacate the basement suite below the rental unit.

On the basis of the testimony of the Agent for the Landlord, who stated that the occupant of the suite below the rental unit has vacated that suite, I find that the Landlord has now complied with the building inspector's direction to vacate the basement suite. As the Landlord has complied with the building inspector's direction, I find there is no reason to also vacate the rental unit. I

therefore find that the Landlord does not have grounds to end this tenancy in accordance with section 47(1)(k) of the *Act*.

As the Landlord does not have grounds to end this tenancy in accordance with section 47(1)(k) of the *Act*, I dismiss the Landlord's application for an Order of Possession and I grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause.

I find that the Landlord's Application for Dispute Resolution is without merit and that the Landlord is not entitled to recover the cost of filing an Application for Dispute Resolution.

To provide some clarity to this tenancy, the parties are advised that the Tenant is under no obligation to occupy the living space below the rental unit or to pay additional rent for the right to occupy that space. Any financial loss the Landlord is experiencing as a result of the residential complex not complying with zoning bylaws is not the fault of the Tenant. The Tenant retains the right to occupy the rental unit, under the existing terms of the tenancy agreement, until the tenancy is ended in accordance with the *Act*.

Conclusion

As I have set aside the One Month Notice to End Tenancy for Cause, this tenancy shall continue until it is ended in accordance with the *Act*.

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 30, 2015

Residential Tenancy Branch

