



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

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 the recovery of the filing fee. Both parties participated in the conference call hearing. Both parties gave affirmed evidence. Both parties confirmed that they received each other's Notice of Hearing Package and evidence. I am satisfied that parties have met the service requirements as per the Rules of Procedure and in accordance with the Act. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to have the Notice set aside?
Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on or about March 1, 2013. Rent in the amount of \$2200.00 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 \$1100.00.

The landlord gave the following testimony:

The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on March 27, 2015 with an effective date of June 1, 2015. The landlord stated that a friend posted the notice as well as slipped a copy through the mail slot. The landlord stated this was done in the presence of witness. The landlord wishes to move into this house and wants the tenant to move out.

The tenant gave the following testimony.

The tenant stated that he feels the notice is “unfair” and was not given in good faith. The tenant stated the landlord lives in another home in Edmonton and has yet to sell that home so moving into this home is not an urgent matter. The tenant further stated that even if the good faith is upheld, the effective date of the notice should be corrected. The tenant stated that he received the notice on March 28, 2015 and that it would not be deemed until four days later on April 1, 2015 making the effective date June 30, 2015 and not May 31, 2015.

Analysis

The tenant has alleged that the landlords have given the notice in bad faith. The tenant made reference that their Alberta home has yet to be sold or that a sale is not yet imminent. The landlords were adamant about moving back to their home in Richmond and that regardless of whether a sale was imminent or not they wish to occupy it, sooner rather than later. In the tenants own testimony, he stated that he fully believes that the landlords will move into the home but just doesn't think they need it that quickly. I accept the landlords' testimony and accept that they genuinely intend to move into the home as soon as possible. I'm satisfied that the landlords issued the notice in good faith.

The tenant has also challenged the effective date of the notice. On the tenants application he stated that he received the notice on March 27, 2015. When the tenant first gave his testimony he stated that he was served on March 27, 2015. The tenant later stated that “I think it was March 28, 2015 when I received the notice”. I fully accept that the tenant was being as truthful and forthcoming as possible however the tenants' recollection of dates seemed vague at best.

The landlord was clear, consistent and credible when providing the date they served the notice. The landlord stated several times that the notice was served on March 27, 2015 in the presence of a witness by posting a notice on the door and slipping a copy through the mail slot. I am satisfied that the Notice was served March 27, 2015. Section 90 of the Act states that when a notice is served by posting on the door or leaving a copy in the mail slot its deemed to be served on the 3rd day after it is left. Even if I were to apply the tenants' interpretation of Section 90 and deemed the notice is served on the fourth day, it would be deemed served March 31, 2015 with an effective date of May 31, 2015. I find that the dates on the notice and the service of that notice to be in accordance with the Act. The correct effective date of the notice is May 31, 2015 however the landlord is content with the tenant vacating by June 1, 2015.

The landlord orally requested an order of possession pursuant to Section 55 of the Act. 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. 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. The Notice remains in full effect and force. The tenant has not been successful in his application.

Conclusion

The tenant's application is dismissed in its entirety. The Two Month Notice to End Tenancy for Landlords Use of Property dated March 26, 2015 remains in full effect and force. The tenancy is terminated. The landlord is granted an order of possession.

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: May 14, 2015

Residential Tenancy Branch

