



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPL, FF

Introduction

In the first application the tenants seek to cancel a two month Notice to End Tenancy dated March 29, 2015 and to recover their filing fee. In the second application the landlords seek an order of possession pursuant to the Notice.

Issue(s) to be Decided

Is the Notice to End Tenancy a valid Notice?

Background and Evidence

The rental unit is a two bedroom house. The tenancy started in February 1992. The current monthly rent is \$1267.00. The landlords hold a \$445.00 security deposit. The landlords purchased the property from the previous owners/landlords earlier in 2015.

On March 29, 2015 Mr. F.V. called the tenants wanting to attend to serve the Notice to End Tenancy. He did not attend that day. There is a dispute about whether or not he called the tenants to inform them he would not be there, but that dispute does not relate to the issue at hand.

Mr. F.V. and his wife attended the next day and served the tenant Mr. D.K. with the Notice in question. The Notice, in the Residential Tenancy Branch standard form, is a "2 MONTH NOTICE TO END TENANCY FOR LANDLORD'S USE OF PROPERTY" form. It indicates that "the landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant."

In addition to the Notice, Mr. F.V. gave the tenant Mr. D.K. copies of a building permit for demolition of the home and a tree permit permitting removal of twelve trees. Mr. F.V. had

picked up the permits from the local government earlier in the day. Both permits are dated March 30, 2015.

The tenants argue that even though they were served with the Notice (service on one tenant is service on all) after the permits were issued, because the Notice was dated March 29th, the landlords did not have these necessary permits prior to issuing the Notice and that the Notice is therefore invalid.

The landlords do not argue that they had the necessary permits before March 30th.

Analysis

The issuing of a two month Notice to End Tenancy is governed by s.49 of the *Residential Tenancy Act* (the "Act"). The relevant portions provide:

Landlord's notice: landlord's use of property

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;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,

- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(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.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;**
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;**
- (c) convert the residential property to strata lots under the Strata Property Act;**
- (d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;**
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;**
- (f) convert the rental unit to a non-residential use.**

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

(emphasis added)

The question is whether a landlord must have the “necessary permits” before signing the Notice or before serving it. Here, clearly, the landlords did not have the permits on March 29th, when the Notice was signed.

The purpose of s.49(6) is to protect the security of tenure of a tenant while also respecting a property owner’s legitimate business interests. The requirement of having all necessary permits before a Notice is given is a measure of that legitimacy.

In my view that test of legitimacy is satisfied if a landlord has all necessary permits at time the Notice is given, that is, when the tenant receives it, regardless of the date of the Notice was signed. It is that date, the date of receipt, that the legitimacy of a landlord’s intention is to be determined.

I am reinforced in the view that the legitimacy of a landlord’s intention is to be assessed as of the date a tenant receives a Notice, by s. 49(2), above, which provides that a landlord may end a tenancy for “by giving notice to end the tenancy...” under s. 49(6). Had the wording been otherwise, for example “by signing, dating and serving a notice” or “by issuing and serving a notice” then perhaps the circumstances as of the date the Notice was signed would be relevant.

In reaching this conclusion I am cognizant of the fact that the *Act* is consumer legislation; that the *Act* confers a benefit and protection to tenants and that authorities state that ambiguities in the interpretation of the *Act* should be resolved in favour of tenants (*Samji v. HFBC Foundation*, 2012 BCSC 1367, Masuhara, J.).

As a result, I find that the Notice to End Tenancy dated March 29, 2015 and served March 30th is a valid Notice and as a result of it this tenancy will end on May 31, 2015.

Conclusion

The tenants’ application is dismissed. The landlords’ application for an order of possession is allowed. It was agreed at hearing that in the event of this result, the order of possession would be effective June 15, 2015. An order of possession will issue to the landlords accordingly.

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 25, 2015

Residential Tenancy Branch

