



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FF, O

Introduction

This hearing dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause and granting her more time in which to make that application. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Should the time for filing this application be extended?
- Is the 1 Month Notice to End Tenancy for Cause dated June 28, 2015 valid?

Background and Evidence

The tenant testified that her tenancy started August 1, 2011. Her rent is \$650.00 per month, including utilities, and is due on the first day of the month. She paid a security deposit of \$300.00.

The landlord's evidence is that until June the property had been managed by another family member. In June, responsibility for property management was transferred to the current property manager. The landlord's witnesses testified that they do not have any information or documents regarding the terms of the tenancy agreement with this tenant.

The rental unit is a cottage located on a rural property. It had been a farm building before it was converted to living accommodation. There are a variety of rental units on this property including a bus.

There is no universally recognized numbering system for the rental units on this property. The tenant testified that there is a number 4 on the cottage but the mailing address has always been #5. The landlord's evidence included an aerial photograph of the property. The landlord's witnesses and the tenant agreed that they were talking about the same building.

The landlord testified that a 1 Month Notice to End Tenancy for Cause was posted to the door of the rental unit on June 28, 2015. The tenant testified that she found the notice on her door that evening. She filed this application for dispute resolution on July 7, 2015.

The sole reason stated on the notice was that the unit must be vacated to comply with a government order. The notice did not specify the unit number of the rental unit but it did include the street address.

The landlord's witnesses testified that for the past year the municipal authority has been pressing them to comply with the zoning and other bylaws. Last June the municipal authority filed a claim in the Supreme Court alleging, among other things, that the following structures did not comply with the zoning bylaw – the triples, three additional buildings which include the rental unit, a bus, barn and a trailer – and asking for, among other things, an order restraining the owner from allowing occupancy of the non-compliant structures.

The landlord's witnesses also testified that in addition to the zoning bylaw problems, the property is located in the Agricultural Land Reserve, which limits residential accommodation to two living units.

There have been discussions between the municipal authorities and the landlord. The landlord's witnesses testified that they met with the building inspector and the regional authority on July 15, 2015. In that meeting it was made clear that the authorities want full compliance with the relevant legislation and in the hearing the landlords indicated that they intend to comply.

The landlord's witnesses testified that they requested and received confirmation from the Bylaw Enforcement Officer of the Regional District of their order regarding occupancy of the various rental units on the property. The letter was filed with the landlord's evidence. The letter reads as follows:

“It had been brought to the attention of the [Regional District] that four structures and a bus continue to be used as illegal dwellings. Specifically, these illegal dwellings are known as 3 (located above the duplex), units 4 and 5 (fronting [the roadway]), unit 6, also known as the “meat market”, and a bus (located next to the meat market).

According to the Electoral Area D Zoning Bylaw No. 3705, this property is zoned A-1 Agricultural Resource Zone. Section 4.1(1) of this bylaw indicated only one

single detached residential use and one secondary suite is permitted for a maximum of two dwelling units. The residential use of a recreational vehicle or bus is specifically prohibited according to section 2.1 (2)(l) of this bylaw. Additionally, if units 3, 4, 5, & 6 were permitted by zoning, building permits for a change of use would be required under the [RD} Building Bylaw N. 3422.

Therefore, you are order to cease occupancy of the noted illegal dwellings no later than Saturday August 15, 2015.”

The landlord testified that all tenants residing in non-compliant units have been served with a notice to end tenancy.

The tenant testified that the day before the hearing she had received a letter from another tenant on this property describing a conversation that took place on June 30 between the other tenant and the new property manager. Part of the conversation related to potential uses for the property and the possible continuation of the other tenant’s occupancy. The tenant asked for an adjournment to give her the opportunity to present this new evidence as evidence that the landlord had an ulterior motive for ending her tenancy.

The landlord’s lawyer submitted that this evidence was available at the time the application was filed and should not be admitted for that reason.

The new property manager testified that she had a conversation with the other tenant but it was only about the possible uses of the property that would comply with the zoning bylaw and the possibility of the other tenant moving into one of the two residences permitted by the zoning bylaw.

The tenant testified that she has not paid the rent for July, August or September.

Analysis

The tenant had applied for more time in which to file her application for dispute resolution. The notice was posted to the door of the rental unit and pursuant to section 90(c) is deemed to have been received three days later, July 1. The tenant’s application was filed on July 7, within the ten day time limit for doing so. Accordingly, an order extending the time for filing is not required.

Some sections of the *Residential Tenancy Act* allow a landlord to end a tenancy if the landlord has or intends to take certain actions in good faith. Section 47, however, allows a landlord to end a tenancy once it establishes, on a balance of probabilities, that

one or more of the causes for ending a tenancy listed in that section exist. Section 47 does not refer to the good faith of the landlord, i.e., the lack of an ulterior motive, as one of the factors that must exist before the tenancy may be ended.

It is for this reason that I am denying the tenant's application for an adjournment in order to submit evidence that relates to the questions of whether the landlord is operating in good faith. Evidence of that nature, even if established, is irrelevant to the issue before me.

Although the notice to end tenancy did not contain the unit number of the rental unit section 68(1) allows an arbitrator to amend a notice if satisfied that:

- the person receiving the notice knew, or should have known, the information that was omitted; and,
- in the circumstances, it is reasonable to amend the notice.

It is clear from the testimony of both parties that all concerned know which unit was in issue. Accordingly, I amend the notice to end tenancy to include unit number 5, and I find that the notice served on the tenant was in the proper form.

Section 47(1)(k) allows a landlord to end a tenancy if the rental unit must be vacated to comply with an order of the federal, British Columbia, regional or municipal government authority. The section does not say that the government authority must have obtained a court order nor does it specify any form for the order. In fact, the legislation does not even specify that the order must be in writing. However, if challenged, a landlord must be able to establish they have been ordered by the relevant government authority to vacate a unit, which is usually accomplished by submitting a written document.

The evidence is clear that the municipal authorities have been pressing the landlord to comply with the zoning bylaw for the past year and that it is not prepared to accept anything other than full compliance. The letter of July 21, 2015, confirms that the municipal authority was requiring the landlord to cease occupancy of the illegal residences. I find that the landlord has presented sufficient evidence to establish they must end the tenancy to comply with an order of a federal, British Columbia, regional or municipal authority. Accordingly, the tenant's application for an order setting aside the notice to end tenancy must be dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral

request for an order of possession. The landlord did make an oral request for an order of possession.

Pursuant to section 47(2) the effective date of the notice is August 31, 2015. Section 53 automatically changes the effective date on any notice to end tenancy to the correct date.

As it is now past the effective date of the notice and the tenant has not paid any rent for September the effective date of the order of possession will be two days after service of the order on the tenant. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court

As the tenant was unsuccessful on her application no order for reimbursement from the landlord of the fee she paid to file it will be made.

Conclusion

The tenant's application is dismissed, for the reasons outlined above. The landlord is granted an order of possession effective two days after service.

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: September 16, 2015

Residential Tenancy Branch

