



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, OLC, LRE, LAT, RR, FF

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a landlord's notice to end tenancy for landlord's use of property / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order suspending or setting conditions on the landlord's right to enter the rental unit / an order authorizing the tenant to change the locks to the rental unit / an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

Both parties attended and gave affirmed testimony. During the hearing the landlord confirmed that he seeks an order of possession in the event the tenant's application for cancellation of the notice to end tenancy does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

This is the most recent of several hearings which have been convened for disputes between these parties. The unit which is the subject of this dispute is located in the basement portion of a house. Other renters occupy the upstairs portion of the house. .

The tenancy has spanned a period of somewhere between 3 and 4 years, rent of \$550.00 is presently due and payable in advance on the first day of each month, and a security deposit of \$250.00 was collected at the start of tenancy.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated July 27, 2015. The notice was served by way of registered mail. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is September 31 [sic], 2015. The reason identified on the notice in support of its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenant filed an application to dispute the notice on August 10, 2015.

The landlord testified that it is his intent to occupy the unit with his spouse and child and that, in the meantime, he himself is a renter in another accommodation. The tenant disputes the landlord's intent, and claims that this is simply the latest attempt by the landlord to end this tenancy.

Other aspects of the tenant's claims concerning the landlord's entry to the unit, the status of locks on the unit, as well as provision of cable and so forth, were generally addressed by the parties with conflicting testimony, and with reference to past hearings.

Analysis

Section 49(3) of the Act provides as follows:

49(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.

Further, Residential Tenancy Policy Guideline # 2 speaks to the "Good Faith Requirement when Ending a Tenancy."

Additionally, section 49(8) of the Act provides as follows:

49(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.

Section 55 of the Act addresses **Order of possession for the landlord**, in part:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property dated July 27, 2015. I also find that the tenant filed an application to dispute the notice within the 15 day period available for doing so after receiving it. Additionally, I find that the landlord has met the burden of proving his good faith intent to use the unit for the purpose shown on the notice.

Following from all of the above, and in consideration of the oral request for an order of possession made by the landlord during the hearing, I find that the tenant's application to dispute the notice must be dismissed, and I find that the landlord has established entitlement to an **order of possession**.

In view of the conflicting testimony of the parties, in the absence of sufficient documentary evidence to support the tenant's miscellaneous claims, and in light of the imminent end of tenancy, all other principal aspects of the tenant's application are also hereby dismissed.

I note that with the exception of applying to recover the \$50.00 filing fee, the tenant has identified no particular amount of compensation sought as a result of his application. As the tenant has not succeeded with the principal aspect(s) of his application, I find that his application to recover the filing fee must also be dismissed.

Finally, going forward, the attention of the parties is drawn to the following particular sections of the Act:

Section 29: **Landlord's right to enter rental unit restricted**

Section 37: **Leaving the rental unit at the end of tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Section 51: **Tenant's compensation: section 49 notice**

Conclusion

The tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby issue an **order of possession** in favour of the landlord effective not later than **November 30, 2015**. This order must be served on the tenant. 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.

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: October 21, 2015

Residential Tenancy Branch

