



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This hearing dealt with an application by the tenants for orders setting aside a 2 Month Notice to End Tenancy for Landlord's Use and compelling the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Is the 2 Month Notice to End Tenancy dated June 28, 2015 valid?

Background and Evidence

This month-to-month tenancy commenced July 1, 2013. The monthly rent of \$750.00 is due on the first day of the month. The tenant paid a security deposit of \$375.00.

On June 28, 2015 the landlord issued and served a 2 Month Notice to End Tenancy for Landlord's Use. The reason stated on the notice was: "The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use."

This rural property was originally owned by the landlord's uncle. At some point her father, who lives in another province, bought the property while her uncle continued to manage it. Recently, her father has taken control of the property and the landlord is managing it on behalf of her father.

Her father took control of the property once he discovered that there are multiple violations of municipal and regional bylaws in existence and the respective government authorities were taking legal action to enforce the bylaws. The owner's objective is to bring this property into compliance.

The rental unit is a suite built above a legal duplex. It was built without any permits of any kind. The landlord filed a letter from the regional district that confirmed that this unit

is an illegal dwelling and orders the landlord to cease occupancy of this, and several other illegal dwellings, no later than August 15, 2015.

The property is located in the Agricultural Land Reserve whose bylaws limits properties to a maximum of tow dwelling units. The only permitted use for this space is dry storage. Any other use would require a zoning change which the landlord says is highly unlikely.

The landlord intends to decommission the unit and convert it to storage. The landlord filed a letter from the Senior Building Inspector for the regional district that confirmed: "No permit is required in order to proceed with and complete decommissioning of the suites."

The tenant had paid the rent to the end of September. The landlord provided the tenant with written confirmation that the rent payments were being accepted for use and occupancy only.

Analysis

Section 49(6) of the *Residential Tenancy Act* allows a landlord to end a tenancy if the landlord:

- has all the necessary permits and approvals required by law; and,
- intends in good faith;

to convert the rental unit to a non-residential use.

The evidence establishes that the landlord has met all the criteria set out in the legislation for ending this tenancy. The 2 Month Notice to End Tenancy dated June 28, 2015 is valid. The tenant's application is 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 arbitrator 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. I grant the landlord an order of possession effective **1:00 pm, October 31, 2015**. If the landlord has accepted rent for October the landlord must either repay the October rent to the tenant or not take steps to enforce the order of possession until November 30, 2015.

Conclusion

The tenants' application is dismissed. The landlord has been granted an order of possession pursuant to section 55 of the Act. If necessary, this order may be filed in the Supreme Court 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 07, 2015

Residential Tenancy Branch

