



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL

Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”) dated October 20, 2015.

The tenant, an advocate for the tenant, the landlord and legal counsel for the landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The parties confirmed receiving the documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act* as a result.

Issue to be Decided

- Should the 2 Month Notice to End Tenancy for Landlord’s Use of Property be cancelled or upheld?

Background and Evidence

The parties agreed that a month to month tenancy began on May 15, 2013. Monthly rent in the amount of \$375 including utilities is due on the first day of each month. The parties disputed whether a security deposit was paid during the tenancy.

The tenant confirmed that he was served on October 21, 2015 with the 2 Month Notice dated October 20, 2015. The effective vacancy date on the 2 Month Notice is listed as December 31, 2015. The tenant disputed the 2 Month Notice on October 23, 2015 which was within the allowable time limitation under section 49 the *Act* of 15 days. Page two of the 2 Month Notice indicates two reasons as:

1. 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.
2. The landlord has all 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.

Legal counsel for the landlord submitted that the landlord had made an error in not realizing that permits would not be issued immediately for repairs to the rental unit, and as a result, the landlord confirmed that he was no longer relying on the second reason specified above to support the 2 Month Notice.

As a result, the hearing continued with the submission of evidence related to the first reason identified above. Legal counsel submitted that the landlord is now 78 years old and no longer wants to be a landlord given the difficult relationship with the tenant. Legal counsel also submitted that the landlord intends to occupy the upper portion of the home where the tenant currently resides. The tenant advocate responded by alleging that the landlord issued the 2 Month Notice in bad faith and wanted to submit testimony regarding their relationship which was not permitted as there was no dispute that the landlord and tenant had an acrimonious relationship. The tenant advocate alleged that the 2 Month Notice was issued because the landlord recently failed to prove a 1 Month Notice was valid and was cancelled. The tenant advocate submitted that the landlord could not occupy both the upper and lower units of the home as they were separate units. The tenant advocate later corrected herself by stating that the landlord could not live in both units at the same time.

Legal counsel denied that the 2 Month Notice was being issued in bad faith and that at this time in his life, the landlord simply wants to stop being a landlord and has no plans to be a landlord going forward.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice to End Tenancy for Landlord's Use of Property – The tenant disputed the 2 Month Notice by alleging that the 2 Month Notice was being issued in bad faith. As the second reason was not being relied upon by the landlord, I will focus on the first reason which reads:

“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.”

As the reason indicated in the 2 Month Notice includes that the rental unit will be occupied by the landlord, I have referred to the Black's Law Dictionary sixth edition for the legal meaning of the word “occupy”.

*Occupy. To take or enter upon possession of; **to hold possession of**; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.*

[my emphasis added]

The word occupy does not require the landlord to move from their current living space, into the rental unit, but does require that the landlord hold possession of and keep for use the rental unit for their use. Therefore, I find the landlord has met the definition of occupy as defined in the Black's Law Dictionary as the landlord has testified under oath that at the age of 78 years old, he no longer wants to be a landlord, which I find to be reasonable and believable.

In addition, I find the tenant advocate's assertion that the landlord cannot occupy both units at the same time to be incorrect. Furthermore, when the tenant advocate later corrected herself that the landlord could not live in both rental units at the same time, I find that argument to be moot, as the 2 Month Notice does not state "live", it states "occupied" which is defined above.

Regarding the allegation that the landlord issued the 2 Month Notice in bad faith, I find the tenant and the tenant's advocate have provided insufficient evidence to prove bad faith. The fact that the parties have an acrimonious relationship and one previous 1 Month Notice that was cancelled, does not prove bad faith. The landlord has the right to no longer be a landlord at the age of 78 and to issue a 2 Month Notice which requires compensation to the tenant in the form of the equivalent of one month's rent. The remedy for the tenant should the landlord fail to comply with the first reason indicated above for a minimum of six months, would be to submit an application for an additional two months of compensation under the *Act*.

Based on the above and on the balance of probabilities, I find that the landlords have met the burden of proof and I find the 2 Month Notice issued by the landlord to be valid. **I dismiss** the tenant's application to cancel the Notice and uphold the 2 Month Notice issued by the landlord with an effective vacancy date of December 31, 2015. As legal counsel referred to a request for possession of the rental unit during the hearing I note that section 55 of the *Act* states:

Order of possession for the landlord

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.**

[my emphasis added]

Given the above and taking into account the oral request for an order of possession during the hearing, I find that the landlord is entitled to an order of possession effective **December 31, 2015 at 1:00 p.m.**, which is the effective date on the 2 Month Notice.

Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed. The 2 Month Notice issued by the landlord dated October 20, 2015 has been upheld.

The landlord is granted an order of possession effective December 31, 2015 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 1, 2015

Residential Tenancy Branch

