



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant CNL
Landlord OPL, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution. The tenant filed their application October 13, 2015 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows;

1. To cancel the landlord's 2 Month Notice to End – Section 49

The landlord filed an application November 24, 2015 for Orders as follows:

2. An Order of Possession for landlord's use of property – Section 55
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to settle their dispute to no avail. The tenant was assisted by a legal advocate. The hearing proceeded on the merits and the parties were permitted opportunity to present relevant evidence, and make relevant submissions. They each acknowledged receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord's Notice to End for Landlord's Use valid; and the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The relevant undisputed evidence in this matter is as follows. The tenancy began May 01, 2010 as a written tenancy agreement. The landlord gave the tenant a 2 Month Notice to End tenancy for landlord's use on September 29, 2015, with an effective date of November 30, 2015. The Notice states the reason for wanting to end the tenancy is:

the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property pursuant to Section 49(6)(e).

The tenant disputes the landlord's good faith intention of the Notice. The tenant provided they do not dispute the unit is intended for the caretaker nor that it will be used by the caretaker. However, the tenant testified they believe the reason for ending the tenancy is that the caretaker operates a daycare business and they want the tenant's larger 2 bedroom rental unit for that purpose; and, the caretaker prefers the tenant's purported better outdoor garden / yard area.

The tenant also argued that the landlord knew in advance, at least 4 months, they had intention to accommodate the caretaker in the tenant's unit, however failed to plan ahead for the tenant with a view to offering the tenant another 2 bedroom unit in the building as it became available. The landlord responded they were of the understanding the tenant would not accept a similar unit above the ground floor, therefore did not determine to make such an offer when the opportunity arose.

The tenant provided into evidence a letter from a medical practitioner informing the Arbitrator the tenant has a chronic fatigue condition and a move for the tenant would be detrimental to their well being. The tenant further testified moving would be a hardship.

The Landlord originally sought an immediate Order of Possession pursuant to the Notice to End and the lapsed effective date of the Notice.

The parties acknowledged that in the event I cancel the landlord's Notice to End the

tenancy continues, and, if I uphold the landlord's Notice to End as valid I must grant the landlord an Order of Possession. The parties confirmed that if the latter the parties were agreeable to an Order of Possession effective January 31, 2016.

The landlord testified that they want the tenant's rental unit for occupancy by their caretakers who currently reside in a smaller rental unit. The landlord and caretaker provided that the intended rental unit is best suited for a caretaker as it is near the front entrance and positioned to best service the building, needs of the tenants, and duties of the caretakers. The landlord testified that to their knowledge there is no permit, or approval required by a law for the caretaker to occupy the rental unit in dispute. They testified the caretakers are trusted and good in their position and their work is valued by the landlord; and, effectively promised the caretakers the larger tenant's unit over 16 months earlier in 2014, upon availability. The landlord provided a copy of the Caretaker Agreement of May 2014 acknowledging the caretaker's request at that time to occupy the unit in dispute. On renewal of the caretaker's contract one year later in May 2015 the landlord and caretaker agreed the previous request would be formalized and they contracted the tenant's unit would become the caretaker unit, *no later than fall 2015 – as written.*

The landlord and the caretaker each testified the caretaker does not operate a daycare business – they are not licensed as a childcare facility and have been solely “babysitting” or looking after one child. The tenant argued the caretaker obtained insurance in order to look after children and have seen additional children with the caretaker. The landlord responded they requested the caretaker to obtain insurance to offset liability in respect to non-residents on the landlord's property, and that if other children have been seen they were never in the care of the caretaker.

The landlord and caretaker testified they too currently have an outdoor garden / yard area similar to the tenant as their unit is adjacent to the tenant, and the discrepancy in the two outdoor areas is not significant or of consequence to the caretaker.

The landlord testified there is no malice toward the tenant. They have been a good tenant and the tenancy has been uneventful. The landlord testified there is no motive to end the tenancy other than to accommodate their caretaker as per their agreement and that no other purpose or undisclosed intention exists.

Analysis

The parties may access resources and a copy of referenced publications at
< www.bc.ca/landlordtenant >

It must be noted that in this type of dispute the landlord bears the burden of proving they issued a valid Notice to End. On preponderance of all the relevant evidence submitted I find as follows.

A landlord may end a tenancy for their use of the property under the provisions in Section 49(6) unless it can be shown the landlord does not honestly intend to do as they state in the Notice to End or has an ulterior motive for ending the tenancy. The tenant argues the landlord's ulterior motive is to accommodate a daycare business and seeks to obtain a better outdoors area. The landlord rejects the premise entirely.

Residential Tenancy Policy Guideline 2. states,

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish they do not have another purpose that negates the honesty of intent, or demonstrate they do not have an ulterior motive for ending the tenancy.

Therefore, I must determine whether the Landlord has met the criteria of section 49(6)(e) - which I characterize as a two part test: *firstly*, that the landlord truly intends to use or convert the tenant's rental unit for solely the stated reason or purpose; and *secondly*, that the landlord has sufficiently shown they do not have an ulterior motive for seeking to have the tenant vacate the unit.

On the testimony of the landlord and the tenant I find the parties themselves do not

dispute the landlord's intent is clearly to accommodate the caretaker into the rental unit in dispute. I have not been presented with evidence another intent exists nor have I discovered evidence of another purpose intended for the unit in the parties' submissions.

In respect to the second test, I am satisfied by the landlord's evidence of the 2014 and 2015 contracts with their caretakers that the agenda of the landlord is to provide appropriate accommodation for their valued employees and that the landlord measured their path toward that end for over 16 months so as to minimize intrusion on the tenant.

I find the tenant's claims the *true motive* for the landlord's Notice to End is to accommodate the caretaker's childcare or daycare operation is not borne out by evidence the caretaker currently operates a daycare business in the sense the caretaker cares for a single child, is not licensed to care for children, and that what insurance they obtained is an accommodation for their peace of mind and that of the landlord. I am not satisfied the evidence establishes the caretaker runs a daycare. I find the tenant's claims respecting the outdoors garden / yard area does not make sense as the caretaker already has a similar feature. If the landlord or tenant has an underlying agenda aimed to defraud, or for the purpose to obtain an unfair advantage by ending the tenant's tenancy, I have not been presented with it and on balance of probability does not exist.

As a result of all the above, I find in this matter that neither the tenant nor the landlord have provided a credible basis of an ulterior motive for ending the tenancy. I find the landlord's stated motive is the sole motive for ending the tenancy. As a result, I find the landlord has met the requirements of having acted in "good faith" in issuing the Notice, and that the landlord's caretaker is to occupy the rental unit. Therefore, I find the landlord's Notice to End Tenancy for Landlord's Use of Property *is valid* and the landlord acknowledges they will provide the tenant with the requisite compensation equivalent to one month's rent, in concert with the Act: by the end of the tenancy or by way the tenant will withhold the payable rent amount for the last month of occupancy.

The landlord's Notice to End dated September 28, 2015, with the effective date of November 30, 2015 is upheld. The landlord is entitled to an **Order of Possession and I grant the Order effective on the agreed date of January 31, 2016.** The landlord is given this Order and will serve the tenant with the Order of Possession and the tenancy will end in accordance with the Order. The tenant's application to cancel the Notice effectively is **dismissed** without leave to reapply.

It was not necessary for the landlord to file their own application in this matter, as it was available to the landlord to orally request an Order of Possession and provide their evidence in response to the tenant's application. Therefore, I find it would be unfair to allow the landlord to collect their filing fee from the tenant and I decline to grant it.

Conclusion

The tenant's application is dismissed. The landlord's application is granted.

I Order the tenancy will end January 31, 2016. The tenant is entitled to receive an amount equivalent to one months rent under the tenancy agreement.

I grant an Order of Possession to the landlord **effective January 31, 2016.** The tenant must be served with this Order of Possession. 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 final and binding on both parties.

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: December 10, 2015

Residential Tenancy Branch

