



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPL & FF

Introduction

The Application for Dispute Resolution filed by the Tenants seeks an order to cancel the 2 month Notice to End Tenancy dated October 10, 2015 and setting the end of tenancy for January 1, 2016.

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for landlord use of property.
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 2 month Notice to End Tenancy was personally served on the Tenant on October 10, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was served on the landlord by mailing, by registered mail to where the landlord resides on October 31, 2015. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the tenant on October 31, 2015.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 2 month Notice to End Tenancy dated October 10, 2015?

- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a month to month written tenancy agreement that provided that the tenancy would start on July 1, 2012. The present rent is \$1050 per month payable on the first day of each month. The tenant paid a security deposit of \$525 at the start of the tenancy.

The grounds set out in two month Notice to End Tenancy are 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 agent for the landlords testified her parents were living with her since the start of the tenancy. She sold their home last year and the present home in which she is living is very crowded. The parents are presently living with her but there are 7 people living in a confined space. Her parents (the landlords) wish to move back into their home.

The agent for the tenants objected on the following basis:

- The agent for the landlord represented that it would be a long term tenancy when the rental unit was first rented.
- It is very difficult to find alternative accommodation at this time of the year especially given the tenant's 3 children go to school in the area.
- The landlord previously gave a two month Notice to End Tenancy but agreed to withdraw the Notice in May 2014. This has put the tenants at a significant disadvantage as they could have found alternative accommodation in for the summer 2015.

The agent for the landlord testified the rental unit is month to month.

Tenant's Application:

I accept the evidence of the agent for the landlord that her parents, the landlords own the rental unit and they have a good faith intention to move into the rental unit. As a result I dismissed the tenant's application to cancel the 2 month Notice to End Tenancy.

Landlord's Application Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession.

Settlement:

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) as follows:

- a. The parties mutually agree to end the tenancy on February 29, 2016.
- b. The parties request that the arbitrator issue an Order for Possession for February 29, 2016.
- c. The tenants are obliged to pay the rent for January 2016.
- d. The tenants are entitled to apply their rights under section 51(1) to the equivalent on one month rent and the tenants are not required to make any further rent payments for February 2016.

As a result of the settlement I granted an Order for Possession effective February 29, 2016. All other claims are dismissed.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Conclusion:

The tenant's application to cancel the Notice to End Tenancy is dismissed. The landlord is entitled to an Order for Possession. As a result of the settlement between the parties I granted an Order for Possession effective February 29, 2016.

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: January 04, 2016

Residential Tenancy Branch

