



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord and her witness. The applicant tenant did not attend.

During the hearing the landlord requested an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Residential Tenancy Act (Act)*.

Should the tenant be unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The landlord submitted the following relevant documents into evidence:

- A copy of a tenancy agreement signed by the parties on March 22, 2013 for a month to month tenancy beginning on March 24, 2013 for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid; and
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on November 2, 2015 with an effective vacancy date of January 3, 2016 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

In the absence of the applicant tenant to present his case as to why the Notice issued by the landlord on November 2, 2015 should be cancelled, I dismiss the tenant's Application for Dispute Resolution in its entirety.

Section 49(2) stipulates that a notice to end tenancy issued under Section 49 is effective on a date that must be not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month, that rent is payable under the tenancy agreement.

For a Notice issued on November 2, 2015 I find the earliest effective date for a tenancy that rent is paid on the 1st of each month is January 31, 2016, pursuant to Section 49(2).

Section 53 of the *Act* states that if a landlord or tenant gives a notice to end a tenancy on a date that does not comply with the requirements under the relevant Section of the *Act*, the effective date of the Notice is deemed to be changed to the earliest date that complies with the relevant Section.

As such, I order the effective date of this Notice be changed to January 31, 2016.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld and the landlord request one an order of possession must be granted to the landlord.

Conclusion

Based on the above, I find the landlord is entitled to an order of possession effective **January 31, 2016 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: January 13, 2016

