



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: OPL
TENANT: CNL

Introduction

This matter dealt with cross applications from both the Landlord and the Tenant.

The Landlord applied to end the tenancy and obtain an Order of Possession.

The Tenant applied to cancel the 2 Month Notice to End Tenancy for the Landlord's Use of the Property.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 9, 2015. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on November 26, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act.

Both parties confirmed receiving the other parties hearing package and the hearing proceeded with both parties represented.

Issues(s) to be Decided

Landlord:

1. Is the Landlord entitled to end the tenancy?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on May 1, 2012 as a month to month tenancy. Rent is \$775.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$387.50 on March 28, 2012. The Tenant said a move in condition inspection report was completed by the previous landlord.

The Landlord said she served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated November 26, 2015 on November 26, 2015 by posting it on the Tenant's door. The Landlord said the reason for the Notice to End Tenancy is that the Landlords are demolishing the rental unit to expand their business. The Landlord said they own a storage business next to the rental property and they want to demolish the house to make room for additional storage. The Landlord said the rental lot is zoned light industrial so a new rental unit cannot be built and the zoning only allows for a commercial use of the land. The Landlord said they purchased the land so that they could expand their storage business. The rental of the house was an interim measure until they decided to expand their business.

The Landlord continued to say they issued the Notice to End Tenancy on November 26, 2015 which is the same day they applied for the demolition permit. The Landlord said they thought the Notice was deemed to be received by the Tenant 3 days after posting it on the door and they thought they would have the permit by that time. The Landlord said they received the permit on December 1, 2015. The Effective vacancy date on the Notice to End Tenancy is January 31, 2016. The Landlord said they are expanding their business and that is why they issued the Notice to End Tenancy as they need the land for additional storage.

The Tenant's Advocate said the Landlords issued a 1 Month Notice to End Tenancy for Cause prior to the 2 Month Notice to End Tenancy for Landlord's Use of the Property. The Advocate said the Landlords cancelled that Notice to End Tenancy for Cause on November 26, 2015 and issued the 2 Month Notice to End Tenancy for Landlord's Use of the Property on November 26, 2015 as well. The Advocate said the Landlords may have thought the Notice to End Tenancy for Cause may not have worked because the Tenant had permission and permits to grow medical marijuana in the rental unit. The Advocate said this is the real reason for the Landlords wanting to end the tenancy.

The Landlords said their insurance company did not want to insure the house because of the marijuana growing and if they could get insurance the rate was \$7,500.00 per year which was dramatically higher than the original insurance rate. The Landlords said this was their first reason to end the tenancy but then they decided to expand their

business. The Landlords said they bought the rental unit and lot for the purpose of expanding their business and it is just happening sooner than was originally planned. The Landlords said they have the permits and they are expanding their storage business on to the rental property lot.

The Advocate said ending the tenancy will cause the Tenant great hardship. The Advocate said the Tenant has a disability which is why he grows medical marijuana and if he has to move his license is not transferable to another property. The Advocate said the Tenant will suffer medically and financially. As well the Advocate said there is a 0 rental vacancy rate in the city and the Tenant has a young daughter he is caring for. The Advocate asked if the Landlord would consider a settlement proposal from the Tenant.

There was some discussion on three different settlement proposals from the Tenant but the Landlord did not accept any of the proposals. The Landlord said they have followed the process and the Tenant has been difficult at times to deal with so they want to end the tenancy as soon as possible. The Advocate said the Landlords did not have the demolition permit in their possession until December 1, 2015 so the effective vacancy date on the Notice should be February 29, 2016 instead of January 31, 2016. The Advocate continued to say a valid 2 Month Notice to End Tenancy served in December must have an effective vacancy date of the end of February. The Advocate said the 2 Month Notice to End Tenancy was not valid until the Landlords had the required permits and that did not happen until December 1, 2015. The Advocate requested the effective vacancy dated be changed to February 29, 2016 to allow the Tenant more time to move.

The Landlord said they thought they would have the demolition permit by the time the Tenant was deemed to have received the Notice to End Tenancy but they received the permit on December 1, 2015, 2 days after the Tenant was deemed to have received the Notice to End Tenancy. The Landlords said their intent was in good faith.

The Tenant said the Landlords have not acted in good faith because they are just looking for a way to end the tenancy because of the high insurance costs.

The Landlord said that clause 29 of the tenancy agreement says that the Tenant cannot do something to cause the insurance premiums to increase and the growing of medical marijuana has done this but that is not the reason they are requesting to end the tenancy. The Landlords said they want to end the tenancy to expand their business.

The Tenant Advocate said in closing the Landlords did not have the permit to demolish the rental unit when they served the Tenant the 2 Month Notice to End Tenancy for Landlord's Use of the Property; therefore the Notice should be cancelled or the effective vacancy date should be change to February 29, 2016.

The Landlords said in closing that they have acted in good faith and so the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated November 26, 2015 should stand. The Landlord said they require the land of the rental property to expand their business. The Landlords requested and Order of Possession if they are successful.

Analysis

Section 49 (6) of the Act says a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

Further Policy Guideline 2.2 says: If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

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 that 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.

I have reviewed the evidence submitted and the testimony given and I accepted that the Landlords first issued a Notice to End Tenancy for Cause based on the increase in insurance premiums and then changed their minds and cancelled that Notice in favor of the 2 Month Notice to End Tenancy for Landlord's use of the Property. The Landlords said they purchased the rental unit for the purpose of expanding their business and the Landlords were forth right in saying they were doing the expansion earlier than first planned, but the Notice to End Tenancy is to make the expansion of the Landlords' business possible. I understand that the Tenant may not agree with this but I go back to

the Landlords' original purpose for buying the land. It was to expand the Landlord's business. Consequently I find the Landlord has acted in good faith and the reason on the 2 Month Notice to End Tenancy for the Landlord's Use for demolition of the rental unit is valid. I find the 2 Month Notice to End Tenancy for Landlord's use of the Property is a valid Notice to End Tenancy.

I also accept the Tenant's Advocates position that the Landlord's did not have the required permits and approvals in place when they issued the Notice to End Tenancy. The Notice to End Tenancy was served in good faith as the Landlords had applied for the permit but they had not received approval until December 1, 2015; therefore I find the 2 Month Notice to End Tenancy for Landlord's Use of the Property should have the effective vacancy date changed from January 30, 2016 to February 29, 2016. Pursuant to section 53 of the Act I change the effective vacancy date from January 30, 2016 to February 29, 2016. Further I award the Landlord an Order of Possession with and effective vacancy date of February 29, 2016.

Further I find the Tenant has not established grounds to have the Notice to End Tenancy dated November 26, 2015 cancelled; therefore I dismiss the Tenant's application without leave to reapply.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective February 29, 2016 has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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 19, 2016

Residential Tenancy Branch

