



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened in response to an application by the tenant filed on December 09, 2015, to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), dated November 24, 2015 with an effective date of January 31, 2016, and to recover the filing fee for this application.

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and testimony in respect to this dispute and to make relevant prior submission to the hearing and fully participate in the conference call hearing. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice issued was a valid Notice, issued in good faith, and for the stated reason(s).

Issue(s) to be Decided

Is the Notice to End tenancy valid?

Should the Notice to End dated November 24, 2015 be set aside?

Is the landlord entitled to an Order of Possession Pursuant to Section 55(1) of the Act?

Background and Evidence

The tenant submitted a copy of the 2 Month Notice to End and a copy of a photograph of a City of Vancouver Stop Work notice dated December 09, 2015 . The landlord did not advance or provide any document evidence to this matter. The Notice to End was issued by the landlord for the reason afforded the landlord by Section 49(6)(b) of the Act;

Landlord's notice: landlord's use of property

49 (6) 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;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

The tenant disputes the Notice to End on the basis the Notice to End was not properly issued in accordance with the provisions of the Act. The tenant argues the landlord in this matter does not have all the necessary permits and approvals required by law to conduct the stated purpose of the Notice. The landlord acknowledged they have applied for permit(s) but have not been notified if any permission is necessary. The parties agreed that when the matter of permission is resolved there is scope for the parties to potentially resolve issues associated with the landlord's purpose for originally seeking an end to the tenancy.

Analysis

In this type of application, the burden of proof rests with the respondent (landlord) to provide evidence that the Notice was validly issued for the stated reason, in accordance with the provisions of the Act.

On the face of the testimony in this matter, I am satisfied the landlord may be required to secure certain permissions required by local government law so as to conduct their stated purpose for issuing the Notice, but to date they have not. As a result of all the above, I find the landlord has not provided sufficient evidence proving the Notice to End was validly issued as prescribed in the Act. Therefore, **I Order** that the Notice to End dated November 24, 2015 **is cancelled**.

As the tenant has been successful in this application they are entitled to recover their filing fee of \$50.00.

The landlord remains at liberty to issue a *new valid Notice to End*, if they have proof to support the Notice.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

I Order that the tenant may deduct \$50.00 from future rent in satisfaction of their award for the filing fee.

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: February 01, 2016

Residential Tenancy Branch

