



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Suanzi Development Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for landlord's use of property.

The landlord and the tenant attended the hearing, each gave affirmed testimony, and the landlord called one witness who gave affirmed testimony. The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began sometime in the spring of 2012 and the tenant still resides in the rental unit. Rent in the amount of \$400.00 per month is payable, however the tenant hasn't paid any rent since August, 2015 and is currently in arrears the sum of \$3,200.00. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$200.00, and no pet damage deposit was collected. There is no written tenancy agreement.

The landlord further testified that on February 23, 2016 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property by registered mail. A copy has been provided and it is dated February 23, 2016 and contains an effective date of vacancy of April 30, 2016. The reason for issuing the notice is: The landlord has all

necessary permits and approvals required by law to convert the rental unit to a non-residential use.

The Regional District has different by-laws for different areas, and in this area, does not allow residing in a cabin without a septic system or ventilation to exhaust for cooking. A copy of the requirements has been provided, which states: "This building cannot be used as a dwelling unit. It may be used as an accessory building if the conditions outlined here are met." If the landlord doesn't comply, the landlord is issued a fine, and has already received one, a copy of which has also been provided. It states that the infraction is for failing to obtain building or plumbing permit and the fine amount is \$200.00, or \$175.00 if paid within 14 days, or \$275.00 if payment is received after 28 days, and contains an address of the property that the infraction refers to. The landlord needs to have the sinks removed, and decommission the cabin and it can't be lived in. It will be converted to a storage shed and the landlord has to follow the steps of the Regional District to avoid anymore fines.

The landlord's witness is the landlord's spouse and testified that the tenant has been living in the cabin for about 4 years, and decided to move out, but backed out of that decision.

The landlord has legitimate permits.

The tenant testified that as of November, 2015 the Regional District provided street signs for the road because emergency vehicles were having problems with addresses. The address on the landlord's permit and the address on the 2 Month Notice to End Tenancy for Landlord's Use of Property are not the address of the rental unit. That address is not attached to the rental unit, nor is it the legal address of the rental unit. The first permit in the landlord's evidentiary material is for a new building, and is dated February 15, 2016 for one address. The notice to end the tenancy quotes that address as the rental unit in addition to a lot number.

Further, there is no evidence that the infraction the landlord received from the Regional District had anything to do with the rental unit. The landlord has more than one cabin.

The tenant further testified that the parties had been to a dispute resolution hearing in July, 2015 and the landlord was ordered to put a door on the rental cabin. A copy of the Decision of the director has been provided. The tenant submits that the landlord has no honest intent to use the rental cabin as a shed, and issued the notice to end the tenancy to avoid having to comply with the previous order to put a door back on. The tenant has installed a temporary door.

The rental cabin does not have a shower and the tenant uses an outhouse. The cabin has windows for ventilation.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. Where the landlord issues a 2 Month Notice to End Tenancy for Landlord's Use of Property, the landlord must not have any dishonest intent. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*.

The tenant relies on the addresses contained in the 2 Month Notice to End Tenancy for Landlord's Use of Property and the address contained on the first permit provided in the landlord's evidentiary material. I have reviewed that document, and I find that the only difference in the address as compared to the notice to end the tenancy is the lot number. The permit on page 3 of the landlord's evidentiary material shows the location as one address and the legal description with the lot number. The Tenant's Application for Dispute Resolution shows that the rental address is the lot number only, and not the street number. The tenant testified that the addresses were changed by the Regional District for the benefit of emergency vehicles. I am satisfied that the permits refer to the rental cabin.

The landlord testified that the Regional District requires that the rental cabin to be decommissioned as a dwelling because of no exhaust and no septic and the tenant didn't dispute that other than to say that she has an outhouse and windows.

The tenant also brought into question the issue of whether or not the landlord has any honest intent to convert the rental cabin to a non-resident building. I have reviewed the evidentiary material, and I see no evidence of any ulterior motive. The tenant stated that the landlord was ordered to install a door to the rental unit, and has issued the notice to end the tenancy to avoid having to do that. The landlord and the landlord's witness both testified that the tenant told them she was going to move out.

In the circumstances, I am satisfied that the landlord has established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*, and the tenant's application to cancel it is dismissed.

The *Residential Tenancy Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having dismissed the tenant's application, I grant an Order of Possession in favour of the landlord effective April 30, 2016, the effective date contained in the notice, at 1:00 p.m. and the tenancy will end at that time.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective April 30, 2016 at 1:00 p.m. and the tenancy will end at that time.

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: April 07, 2016

Residential Tenancy Branch