



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Owners of BCS 1512
And (tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, O

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and other.

The hearing was conducted via teleconference and was attended by one of the tenants and an agent for the landlord

The tenant clarified that when they had checked off other on the Application for Dispute Resolution they meant they were seeking to recover the costs to pursue their Application such as registered mail and their filing fee.

I advised the parties that the *Residential Tenancy Act (Act)* does not provide for the recovery of the costs to pursue a claim with the exception of the filing fee charged by the Residential Tenancy Branch. I advised the parties I would consider the claim for recovery of the filing fee only.

At the outset of the hearing a member of the strata council responsible for the rental unit called into the hearing. I asked if he was there as a witness to provide testimony. Both the council member and the agent for the landlord's agent confirmed that he would be providing testimony.

I advised the parties that since he was going to be providing testimony he could not remain in the proceeding until such time as we needed his testimony. I advised the council member that we would call him into the hearing when we needed his testimony and if for some reason we didn't need his testimony, I would have the landlord's agent call him after the hearing to advise him.

When we were ready to call in the landlord's witness I asked the landlord's agent what testimony the council member was going to provide. She stated that he was not there to provide testimony he simply wanted to observe the hearing. As result, the hearing was nearly finished at that point so we did not call the council member into the hearing.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I

must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

I note that at the start of the hearing the tenant submitted that since they have filed their Application for Dispute Resolution their circumstances have changed and they are now planning to move out of the rental unit but need to remain there until August 15, 2016.

I offered the landlord an opportunity to make a mutual agreement to end the tenancy on August 15, 2016 with the support of an order of possession being granted for that date. The landlord's agent declined this opportunity because she stated the new caretaker will need the unit by July 1, 2016.

Issue(s) to be Decided

The issues to be decided are whether the tenants are 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 *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 parties agreed the tenancy began in August 2011 for a current monthly rent of \$820.00 due on the 1st of each month. The tenancy began as a 1 year fixed term and converted to a month to month tenancy in August 2012.

The landlord testified that rental unit is owned by the strata corporation and until 2008 had been used by the on-site caretaker for the strata property. She confirmed that the strata corporation does not rent out any other rental units and they had made an offer to a new caretaker who will require use of the rental unit as part of their employment. The landlord did not provide any documentary evidence such as a strata decision, a letter offering or an employment contract for a new caretaker.

The landlord submitted that they have not yet entered into a tenancy agreement with the new caretaker regarding the rental unit at this time as they were waiting for the outcome of this hearing.

The tenant submitted that the landlord has failed to provide them with any confirmation of the hiring of the caretaker or the need for the rental unit to be used as the caretaker's unit despite repeated requests.

The tenant also submitted that since they have lived there and the previous tenants in the unit had agreement with the landlord for a low rent because they were required to open and close the clubhouse each day; deal with after-hours issues such as bylaw infractions and noise complaints. The tenants submitted that they were in fact, at least in part, caretakers.

The landlord testified that the only function they performed was to open and close the clubhouse daily. She stated that there was no requirement to report or deal with any bylaw infractions. The landlord submitted that the tenants did not perform any caretaker functions but did a chore for the landlord.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if:

- a. The landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
- b. The landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit;
- c. The landlord has all the necessary permits and approvals required by law, and intends in good faith, to:
 - i. Demolish the rental unit;
 - ii. Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - iii. Convert the residential property to strata lots under the *Strata Property Act*;
 - iv. Convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
 - v. Convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
 - vi. Convert the rental unit to a non-residential use.

The landlord has the burden of proof to establish the rental unit is going to be used for the stated purpose identified in the Notice to End Tenancy. I have considered the landlord's oral submissions and I find the landlord has failed to establish that they intent to convert the rental unit for use by a caretaker.

I find the landlord has failed to provide any documentary evidence at all to support her position that the landlord has hired a new caretaker who has been provided, as a term of their employment, with the rental unit.

As the start date of employment is less than one month away from the date of this hearing and the 2 Month Notice was issued to the tenant on April 20, 2016 I find it is

unlikely that the landlord could not provide some form of documentary evidence to establish these intentions.

Conclusion

Based on the above, I order the 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on April 20, 2016 is cancelled and is of no force or effect.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$100.00** comprised of the fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) 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: June 02, 2016

Residential Tenancy Branch