



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODLAND GARDENS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

On September 6, 2016, the Tenant submitted an Application for Dispute Resolution requesting to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property dated August 23, 2016, (the 2 Month Notice) and to recover the filing fee for the Application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is there cause to end the tenancy based on the 2 Month Notice dated August 23, 2016?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties submitted that the tenancy began 2 or 3 years ago, and is a month to month tenancy. Rent in the amount of \$600.00 per month is to be paid to the Landlord on or before the first day of the month. The Tenant submitted that he paid a \$300.00 security deposit to the Landlord.

The Landlord testified that she is renovating the rental property and has completed renovations on 75% of the units. She testified that the Municipality of Cowichan has been to the rental property and advised the Landlord that permits are not required for the renovations. The Landlord testified that the renovations to the rental units include new kitchens, bathrooms, flooring, and paint and it is not possible for the Tenant to remain living in the rental unit during the renovation.

The 2 Month Notice contains the following reason for ending the tenancy:

- *The Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

The Landlord testified that the Tenant has not applied to move into any of the other units within the rental property. The Landlord testified that the rental property is in transition from a smoking building to a non-smoking building. She testified that there are two or three units that have not been renovated that still allow smoking. The Landlord testified that the Tenant smokes and that would be an issue, but nevertheless the Tenant has not even applied to move to another unit.

The Landlord submitted that as the owner, she has the right to renovate her property.

The Tenant disputed the 2 Month Notice within the required timeframe.

The Tenant submitted that the Landlord does not require permits because the renovations are not true renovations. He testified that the Landlord has renovated other units within the rental property but not all of the rental units are renovated the same.

In response, the Landlord testified that the Tenants unit will be renovated to provide a new bathroom, including the removal of the toilet, and new floor tiles and replacement of the vanity. The kitchen will be taken out and renovated, and new tile and laminate flooring will be installed.

The Landlord submitted that if the Tenant's Application to cancel the 2 Month Notice is set aside, she is requesting an order of possession. She agreed to give the Tenant more time to move out, and stated she will give the Tenant until January 31, 2017, to vacate the rental unit.

Residential Tenancy Policy Guideline #2 Good Faith Requirement when Ending a Tenancy provides the following guidance:

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 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.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony from the Landlord that the units within the rental property are undergoing renovations. The Landlord testified that 75% of the units have been renovated and the Tenant testified that other units have been renovated. I accept the testimony from the parties that the Landlord does not require permits to perform the renovations. The Tenant has not established that the owner is attempting to end the tenancy in bad faith or for an ulterior motive. Based on the testimony from the Landlord on the renovations planned for the rental unit, I accept that the rental unit is required to be vacant to perform the renovations.

I dismiss the Tenant's Application to cancel the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated August 23, 2016.

Under section 55 of the Act, when a Tenant's Application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2 Month Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession. The Landlord agreed to give the Tenant until the end of January to move out. I grant the Landlord an order of possession effective by 1:00 p.m. on January 31, 2016, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenant was not successful with his Application, I do not grant recovery of the cost of the filing fee.

Conclusion

The Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated August 23, 2016, is dismissed.

I grant the Landlord an order of possession effective by 1:00 p.m. on January 31, 2017. The Tenant must be served with the order of possession.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: November 01, 2016

Residential Tenancy Branch