



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the two month Notice to End Tenancy dated September 27, 2016 and setting the end of tenancy for November 30, 2016.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was served on the Tenant by posting on September 27, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on October 7, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated September 27, 2016?

Background and Evidence

The tenancy began on February 1, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$375 per month payable in advance on the first day of each month. This is a month to month tenancy. The tenant(s) paid a security deposit of \$225 at the start of the tenancy

The landlord testified they have alternative housing available for the tenant to move to.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use

The landlord provided evidence that the building is going to be converted to transitional supportive housing with 10 units having a maximum stay of 30 days, and the remaining 28 units having a maximum stay of six months.

The landlord further testified that the building is being made available to women coming out of detox, and they have signed a memorandum of understanding with BC housing to support this program.

The landlord further testified that there are actually no permits or approvals required by law to convert this unit to supportive housing.

The tenant did not testify at the hearing. However, the advocate for the tenant had an opportunity to question the landlord and made the following legal submissions:

- a. They do not accept the testimony of the landlords that all the permits and approvals in place to convert this building to non-residential use.
- b. The memorandum of understanding with BC housing wasn't signed until after the Notice to End Tenancy was given, and therefore, all approvals were not in place.
- c. The building is not being converted to non-residential use as set out in the grounds of the Notice. She does not dispute the fact that it will be supportive housing, which is not covered under the Residential Tenancy Act. However, she submits the Notice to End Tenancy is not valid because it is still a type of residential housing

The landlord submitted that supportive housing is excluded and not covered under the Residential Tenancy Act, and therefore this cannot be considered residential housing.

Analysis

The landlord referred to a decision of Arbitrator Wakefield dated November 21, 2016 involving the same landlord and a rental unit a few doors down where the arbitrator

dismissed the Tenant's application to cancel the 2 month Notice and granted an Order for Possession. I find the reasons in that decision persuasive.

I accept the landlord's testimony that no permits or approvals are required by law to convert this rental unit to supportive housing. The tenants advocate submitted that the landlord does not have the permits and approvals required in place. However, the tenant's advocate failed to provide evidence to show that any permits or approvals are required by law.

The tenant's advocate submitted that all approvals were not in place at the time the memorandum of understanding with BC housing was not signed at the time the Notice to End Tenancy was given. I determined that there is no evidence to show that the memorandum of understanding with BC housing was required by law to convert this rental unit into supportive housing.

I do not accept the tenant's advocate's submission that this unit will still be used for residential purposes (supportive housing), and the grounds require that it be used for non-residential purposes. In my view the words residential purposes refer to residential purposes as defined in the Act.

Section 1 of the Residential Tenancy Act defines rental unit and residential property as follows::

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"residential property" means

(a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,

Section 4 of the Residential Tenancy Act states:

4(f) This Act does not apply to

(f) living accommodation provided for emergency shelter or transitional housing,

To be considered residential housing for the purposes of a notice under the Residential Tenancy Act, there would have to be rental units that were rented to a tenant. That would not be the case in this situation as the landlord will be providing short term transitional supportive housing to clients. I find that section 4(f) further supports the

exclusion of transitional housing from the definition of residential tenancy under the Residential Tenancy Act. The use of the units for transitional housing is not a residential purpose as considered by the Act.

As a result I determined that the landlord has served a valid two month Notice to End Tenancy with an end of tenancy date of November 30, 2016. I determined the Notice complies with section 52 (form and content). As a result I dismissed the tenant's application to cancel the Notice.

Section 55 of 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.

Conclusion

In summary I dismissed this application without leave to re-apply. I have issued an Order of possession effective 1:00 p.m. on November 30, 2016.

Dated: November 28, 2016

Residential Tenancy Branch