



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated February 9, 2017 and setting the end of tenancy for April 30, 2017.
- b. An order to recover the cost of the filing fee.

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 two month Notice to End Tenancy was sufficiently served on the Tenant on February 14, 2017. 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 March 8, 2017.

Unfortunately, neither party presented documents to the other side and to the Branch. This decision is based on the oral representations made by the parties including statement as to what was stated in the documents. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began approximately 5 years ago. The present rent is \$1500 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$750 at the start of the tenancy.

Grounds for Termination:

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

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The tenant disputes the allegation in the Notice stating he does not believe that the landlord or close family member intends to move in. He gave the following evidence:

- The landlord listed the property for sale in December 2016.
- He received a phone call from a representative of the landlord that they would like the tenant to move out so that it would be easier to sell in the future.
- He has received letters from a Vancouver based law firm asking that the rent be re-directed to them. However, it appears that problem has been resolved.

The agent for the landlord testified as follows:

- His client does not speak English and does not understand the process.
- He has an affidavit from his client sworn before a notary that he intends to move into the rental unit as soon as the tenant vacates and he intends to live there for at least 6 months.
- His client is presently living with other family members and friends and wants to move in as quickly as possible.
- The matter with the Bank has been resolved.

The tenant acknowledged that the landlord has a legal right to move into the rental unit should he wish provided he has a good faith intention to do so. However, he wanted to make it clear that if the landlord does not move in as represented that he is in a position to make a claim against the landlord for the equivalent of double the rent.

Analysis:

After carefully considering the oral testimony presented I determined the landlord has a good faith intention to move into the rental unit. I accept the testimony of the agent for the landlord when he stated he has a sworn affidavit that the landlord intends to move into the rental unit after the tenant vacates. As a result I dismissed the tenant's application to cancel the 2 month Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective April 30, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

As a courtesy to both parties I have included section 51 of the Residential Tenancy Act.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

This decision is final and binding on the 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: March 27, 2017

Residential Tenancy Branch