



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KGERHARD BJORNSON
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, CNR, MNDC

Introduction

This matter dealt with an application by the Tenant to cancel two Notices to End Tenancy one for the Landlord's Use of the Property and one for unpaid rent and for compensation for a loss or damage under the Act, regulations or the tenancy agreement.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on April 13, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notices to End Tenancy?
2. Is the Tenant entitled to compensation for a loss or damage?

Background and Evidence

This tenancy started on April 1, 2009 as a month to month tenancy. The Tenant said rent is \$400.00 per month payable on the 1st day of each month. The Landlord said the rent is \$500.00 per month payable on the 1st of each month. The Tenant continued to say the rent was reduced from \$500.00 per month to \$400.00 per month based on an arbitration decision of July 20, 2015 because of a reduction in services received by the Tenant. The decision also states the rent will return to \$500.00 when the services are restored. The Tenant said the both services have not been restored. The Landlord said the gas has been restored but the Landlord is not going to pay the cable costs. The Tenant said he paid a security deposit of \$350.00 and the Landlord said he paid a security deposit of \$187.50.

The Landlord said he served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated March 31, 2017. The Landlord said he personally delivered the Notice to End Tenancy on March 31, 2017 and the Notice to End Tenancy says it was served on March 31, 2017. There is no proof of service included in the evidence.

The Tenant said the 2 Month Notice to End Tenancy for Landlord's Use of the Property was delivered on April 1, 2017 shortly after midnight on March 31, 2017. The Tenant said he included a rent receipt dated April 1, 2017, that he received at the same time as he received the 2 Month Notice to End Tenancy for Landlord's Use of the Property. The effective vacancy date on the 2 Month Notice to End Tenancy for Landlord's Use of the Property is June 1, 2017.

The Landlord said the reason on the 2 Month Notice to End Tenancy for Landlord's Use of the Property is that the Landlord plans to move into the rental unit as soon as the unit is vacant. The Landlord said he is presently living with his mother.

Further the Landlord said he issued a 10 Day Notice to End Tenancy for unpaid rent dated April 23, 2017. The Landlord said he is not taking action on this Notice to End Tenancy and he is withdrawing it.

The Tenant said he does not believe the Landlord is going to move into the rental unit as the Landlord sent him a text message saying if the rent was increased the Tenant could stay in the rental unit. The Tenant said he did not send the text message in with the evidence package.

The Landlord repeated that he is moving into the unit when the Tenant moves out.

Further the Tenant said he has applied for monetary compensation of \$200.00 in overpayment of rent and \$28.00 for costs to prepare for the hearing (registered mail). The Tenant continued to say the over payment of rent was for 2 month when the Landlord demanded \$500.00 instead of the reduced rent of \$400.00.

The Landlord said the rent should be \$500.00 as he has restored the gas to the rental unit.

The Tenant agreed the gas has been turned back on but the cable has not been included in the rent as stated in the tenancy agreement.

The Landlord said the cable was cut off with the previous owner of the property and he is not going to pay for the Tenant's cable bill.

The Landlord said in closing he wants to end the tenancy so he can move into the rental unit.

The Tenant said in closing that he believes the Landlord is not acting in good faith and will not move into the rental unit. The Tenant said it will be difficult for him to find a new rental unit.

Analysis

Section 49 (3) of the Act says: A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

A Landlord has the right to end a tenancy if the rental unit is being used for the owner or a close family member. I accept the Landlord's affirmed testimony that the Landlord is moving into the unit as soon as he is able too. Further the Tenant has not provided any evidence to prove the Landlord is not preparing to move into the unit. Consequently, I find the Tenant has not established grounds to prove the 2 Month Notice to End Tenancy for Landlord's Use of the Property is not valid. I dismiss the Tenant's request to cancel the Notice to End Tenancy dated March 31, 2017. As well it is unclear when the 2 Month Notice to End Tenancy for Landlord's Use of the Property was served to the Tenant as there is no Proof of Service. The Landlord said it was served the night of March 31, 2017 and the Tenant says it was served just after midnight on April 1, 2017. As there is no proof of service and the Landlord testified he served the Notice to End Tenancy outside of business hours I find the 2 Month Notice to End Tenancy for Landlord's Use of the Property is deemed to have been served on April 1, 2017. Consequently pursuant to section 55 of the Act I grant the Landlord an Order of Possession with an effective vacancy date of June 30, 2017. The effective vacancy date on the Notice to End Tenancy dated June 1, 2017 automatically is corrected pursuant to section 53 of the Act to the correct date of June 30, 2017.

Further in regard to the Tenant's monetary claim for \$200.00 in overpayment of rent, the Landlord has restored the gas in the rental unit, but has not restored the cable as in the tenancy agreement. Consequently I find the Tenant has made an overpayment of rent for two months, but as one of the services which caused the reduction in rent has been restored the Tenant's overpayment is reduced from \$100.00 per month to \$50.00 per month. I award the Tenant \$100.00 as compensation for the overpayment of rent for 2 months.

With regard to the Tenant's monetary claim for \$28.00 for costs to prepare for the hearing. These costs are not eligible claim under the Act. Therefore I dismiss the Tenant's claim for \$28.00 for hearing costs.

Further I order the Landlord to compensate the Tenant the equivalent of one month's rent in the amount of \$450.00 at the end of the tenancy June 30, 2017, pursuant to section 51 of the Act when issuing a 2 Month Notice to End Tenancy for Landlord's Use

of the Property. The Tenant will pay the June, 2017 rent of \$450.00 when the rent is due.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

A monetary Order for \$550.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord in accordance with the Act: the monetary order may be enforced in Province Court (Small Claims Court) for British Columbia.

An Order of Possession effective June 30, 2017 has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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: May 18, 2017

Residential Tenancy Branch