



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nelson Cares Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNL

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy and for an order cancelling a notice to end the tenancy for landlord's use of property.

The tenant and an agent for the landlord attended the hearing, and the landlord's agent was accompanied by a property manager, who did not testify or take part in the hearing. The landlord's agent and the tenant each gave affirmed testimony and were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute the notice to end the tenancy?
- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord is a society that provides, among other services, affordable housing in the community.

The landlord's agent testified that this month-to-month tenancy began on June 3, 2005 and the tenant still resides in the rental unit. Rent in the amount of \$431.00 per month is currently payable on the 1st day of each month and there are no rental arrears. At the

outset of the tenancy the landlord at the time collected a security deposit from the tenant in the amount of \$162.50 which is still held in trust by the current landlord, and no pet damage deposit was collected. The rental unit is a townhome in a complex containing 37 rental units, and the landlord has several other rental buildings, with over 100 rental units in total.

On June 7, 2017 the landlord's agent posted to the door of the rental unit a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided as evidence for this hearing. It is dated June 6, 2017 and contains an effective date of vacancy of August 31, 2017. The reason for issuing it states: "The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

The landlord's intent is to convert the rental unit to a 2 bedroom unit to house 2 adults or a family, and due to its size, the landlord's project manager will change the living room size and add 2 walls. It's also wheelchair accessible, which the tenant does not require. The tenant is over-housed due to the size of this particular rental unit, and the demand for housing in the community is high. Because the landlord is not re-zoning or taking down structural walls, no permits or approvals are required.

The landlord offered the tenant another property temporarily which is for a single person in another complex of the landlord which contains 28 units, but the tenant declined. That unit is also planned for demolishing so the landlord can build a 4-story building with 48 units so it would have to be a fixed term tenancy until the end of December, 2017. Another became available and again the tenant declined. The landlord also offered to put the tenant on a wait list for another unit for which the tenant qualifies, but again the tenant declined. The landlord also has housing support staff to assist in finding suitable housing.

The landlord served the tenant with the notice to end the tenancy giving more than 2 months notice, and the tenant didn't dispute it until 6 weeks after. The work in the rental unit was supposed to start in September, but as a result of the dispute, the work is several weeks behind schedule. The work will be completed as soon as the rental unit is vacant.

The tenant testified that she has lived in the rental unit for 12 years. The wheel chair access was built to make a common area accessible, not to live in, and the landlord built it into a 1 bedroom unit. The ramp would be difficult for loading and unloading wheel chairs due to the hills, and the tenant doesn't even use her parking spot because of the hills and slants.

The landlord had offered the tenant another rental unit, but only for short-term and moving again will be difficult.

The tenant was stunned upon receiving the Two Month Notice to End Tenancy for Landlord's Use of Property and problem-solved the issue with her parents. The tenant's father went to the Advocacy Centre who advised that the tenant should file the Application for Dispute Resolution and ask for more time to dispute the landlord's notice. The tenant didn't pay attention to the writing on the form. The tenant has a slight disability but can usually manage.

Analysis

The *Residential Tenancy Act* specifies how a tenancy ends, and one of the reasons a landlord can end the tenancy is to demolish or renovate or repair a rental unit in a manner that requires it to be vacant. The *Act* also states that if a tenant does not dispute such a notice within 15 days of service, or deemed service, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the landlord's agent testified that she posted the Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) to the door of the rental unit on June 7, 2017, which I find is deemed to have been served 3 days later, or June 10, 2017. The 15 day deadline expired on June 25, 2017, however the tenant didn't file the dispute until July 24, 2017.

Page 2 of the Two Month Notice to End Tenancy for Landlord's Use of Property has information for landlords and tenants in bold print. The portion for the tenant states:

"INFORMATION FOR TENANTS

"You have the right to dispute this Notice within 15 days after you receive it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch or a Service BC Office. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

"If you do not file an Application for Dispute resolution within 15 days, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice"

The tenant testified that she didn't pay attention to the writing on the Notice, and has now applied for additional time to dispute it. I do not see that as a compelling reason to grant additional time to file the Application for Dispute Resolution. I find that allowing the additional time would be prejudicial to the landlord, and the tenant's application is dismissed.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end the tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the Notice, and I find that it is in the approved form and contains information required by the Act. Since the effective date of vacancy has passed, I grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: October 05, 2017

Residential Tenancy Branch