



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEBHARD PARTNERS CANADA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking 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 each gave affirmed testimony. The parties were given the opportunity to question each other and give closing submissions.

During the course of the hearing the tenant advised that he had not received the landlord's evidentiary material. The landlord's agent testified under affirmation that the evidentiary material was posted to the tenant's door 8 or 9 days ago. The tenant disputes that and a considerable amount of time was spent during the hearing questioning the tenant with respect to what was received and when, and the tenant explaining what he had received.

The landlord's evidence was received by the Residential Tenancy Branch 1 day later than the time provided in the Rules of Procedure. The landlord's agent testified that he was too busy with other rentals during that time to file it on time. However, considering that it was not received by the Residential Tenancy Branch on time, and considering the tenant's testimony, I am not satisfied that the evidence was provided to the Branch or to the tenant within the time limits required by the Rules of Procedure, and I decline to consider the landlord's evidence. All other evidence and the testimony of the parties is considered in this Decision.

Issue(s) to be Decided

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*, and good faith intent?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began about 20 years ago and the tenant still resides in the rental unit. Rent is about \$530.00 per month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant, but the landlord's agent is not certain how much, and no pet damage deposit was collected. The rental unit is an old small cottage.

The landlord's agent further testified that on November 24, 2017 he posted a Two Month Notice to End Tenancy for Landlord's Use of Property to the door of the rental unit. The tenant claimed that he hadn't received it when the parties had a discussion, so rather than go back to the community that the landlord's agent resides in to get another copy, he created a second one to be sure the tenant had the information on page 2 of the notice.

A copy of a Two Month Notice to End Tenancy for Landlord's Use of Property has been provided for this hearing by the tenant, and it is undated and contains an effective date of vacancy of February 15, 2018. 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 agent testified that the second one was served by posting it to the door of the rental unit on December 1, 2017.

No permits are required because the landlord does not intend to change the foot-print, but complete inside work and completely gut the home. The rental home is an old cabin that has been nick-named a miners' cabin and due to its age, there is definitely asbestos in the walls and possibly in the linoleum. It needs to be up to code to protect the landlord's investment, and a hazmat team is required. The landlord's agent does not know how long it will take or what all needs to be done until the work starts, but the entire home will be completely gutted on the inside. Once completed, the rental home will be re-rented for market rent.

When questioned about why the landlord intends to do the renovations now, the landlord's agent testified that there is a shortage of contractors and 1 or 1 ½ years wait time. The landlord has contractors lined up now. Further, the landlord's agent received a call from the tenant about rats. The landlord had an exterminator attend who found no sign of rats, but the landlord also has a seniors' apartment building next door to the rental unit. The tenants had thought rats were in the ceiling, which was examined, and a new roof was put on.

The tenant testified that he has resided in the rental home for 20 years and there's nothing wrong with it at all. Everything works. At one point the tenant went to the landlord company explaining about rats and they sent the landlord's agent and a pesticide guy who said that if there are rats, it could be from compost, and he left. A month went by and the tenant never heard anything.

The tenant had been residing in the rental unit with his girlfriend, however they have separated and right after the girlfriend moved out, the landlord gave the tenant the Two Month Notice to End Tenancy for Landlord's Use of Property.

The landlord has never made mention of replacing flooring or carpet. The tenant has painted and steam-cleaned carpets. The landlord's agent would make comments about the tenant only paying \$531.00 and the landlord's agent wanted the tenants out so he could raise the rent after renovations. The tenant believes it's personal; the landlord wanted the tenants out and the tenant's

girlfriend moved out at the beginning of December, 2017 and now that she has moved, he wants the tenant to move out.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Further, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must be able to demonstrate good faith intent to do with the rental unit whatever is contained in that Two Month Notice to End Tenancy for Landlord's Use of Property.

49 (6) *A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:*

(a) *demolish the rental unit;*

(b) *renovate or repair the rental unit in a manner that requires the rental unit to be vacant.*

The landlord's agent testified that due to the age of the rental unit there is asbestos in the drywall and possibly in the linoleum and the tenant didn't dispute that. The tenant feels that the notice was given as a personal matter and not fair. The tenant has resided in the rental unit for 20 years and testified that there is nothing wrong with the home, but that in itself does not negate the landlord's right to make significant repairs. The landlord's agent testified that the work is being done now to protect the landlord's investment and because it's difficult to find contractors. I have no reason to disbelieve that testimony. The landlord needs only to establish good faith intent, and I find that the landlord has done so.

The tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property is dismissed.

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a 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.

In this case, the landlord's agent testified that he served 2 such notices, one of which has no date of issuance and an effective date of vacancy of February 15, 2018. The other is dated November 24, 2017 and contains an effective date of vacancy of February 1, 2018, and the landlord's agent testified that he would be content with an effective date of vacancy of February 15, 2018 to allow the tenant more time to find alternate accommodation. I have reviewed the notice provided by the tenant with an effective date of vacancy of February 15, 2018, and I find that it is in the approved form. Therefore, I grant an Order of Possession in favour of the landlord effective February 15, 2018, and the tenancy will end at that time.

The landlord must provide the tenant with compensation in the amount of 1 month's rent, as well as a reduction for the month of February. If the tenant gives the landlord 10 days written notice to

vacate earlier, the tenant will pay only the rent for that portion of the month, and the landlord is still required to provide 1 month's compensation to the tenant.

Conclusion

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

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on February 15, 2018.

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: January 26, 2018

Residential Tenancy Branch