



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property; an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent and a witness for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to 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.

At the commencement of the hearing, the tenant raised some preliminary issues:

1. the effective date of vacancy contained in the Two Month Notice to End Tenancy for Landlord's Use of Property;
2. the missing address of the rental unit; and
3. the landlord's name.

All of these issues are addressed in the Analysis portion of 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*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that he is the son of the landlord, who passed away last year. He is not certain when the tenancy began, however the tenant still resides in the rental unit and pays rent in the amount of \$750.00 per month, and there are no rental arrears. The landlord's agent is not certain, but does not believe a written tenancy agreement exists. The rental unit is

an upper suite of a side-by-side duplex and both sides contain upper and lower units, all of which are owned by the landlord's estate and are all currently tenanted.

On March 28, 2018 the tenant was personally served by the landlord's property manager with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided for this hearing. It is dated March 28, 2018 and contains an effective date of vacancy of March 28, 2018. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." The deceased landlord's wife does not reside on the rental property, and another son is renting another unit, and the landlord's wife wants her son to move into the rental unit and be the caretaker. A copy of a letter signed by the son has been provided for this hearing, which appears to have been signed in the presence of a Notary Public, but is not sworn, stating that the writer intends to occupy the rental unit. The landlord's agent testified that his brother chose this particular unit, not wanting to reside in a lower level suite, and the landlord's agent is not certain of the condition of any of the rental suites. None are currently vacant.

The landlord's agent is aware of compensation required under the *Residential Tenancy Act* and consequences.

The landlord's family currently owns 7 rental properties and one is currently vacant, which the tenant could rent, but it's a whole house and rent would be \$2,300.00 per month.

The landlord's witness is the wife of the deceased landlord and mother of the landlord's agent. She testified that her youngest son is moving into the rental property and wants an upper unit.

The witness does not recall meeting the tenant or speaking with him; her husband dealt with all tenancies, and since his passing, the landlord's agent has been dealing with them.

The tenant testified that the notice to end the tenancy is incomplete and inaccurate.

The tenant further testified that he moved into the rental property on February 1, 2003 in a lower unit and rent was \$600.00 per month. About 9 years ago he moved into the upper unit that he still resides in. Rent was \$700.00 per month and has been increased to \$746.00 per month by mutual consent, and there is no written tenancy agreement. The landlord collected a security deposit in the amount of \$300.00, and no pet damage deposit was collected.

About 3 months ago, the landlord's property manager demanded an increase of \$100.00 per month from the other 3 units in the complex, claiming that it was too expensive and they weren't paying enough. The lower level tenant's rent was increased by \$100.00 per month, and one of the tenants agreed to a \$50.00 per month increase, but discussed it with the tenant. The tenant told the neighbouring tenant that the common way rent had been raised by the landlord before he passed was 3 months notice in the amount of the percentage allowed by the law.

In March this year, the landlord's agent and son said he was going to renovate and wanted the tenant to move out. The property manager told another tenant they were going to renovate to get

more money. After learning that he couldn't do that, the younger brother suddenly became known to this situation and there was no prior indication that he would want to live in any of the units or be in the rental complex at all. He hates the house and the city, and hasn't been there for the last 10 years or more. There is no probability that he will be moving in, and the landlord has many others. The tenant submits that this particular rental unit was chosen because they couldn't increase the rent.

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*, which can include the reason(s) for issuing it.

Firstly, with respect to the landlord's name, the parties agree that the landlord with whom the tenant had a tenancy agreement with has passed away. The *Act* permits an agent to act for a landlord. The Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) names the landlord who passed away. The *Act* defines a landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this.

I find that the landlord named in the Notice is acceptable, and does not invalidate the Notice.

With respect to the tenant's preliminary question regarding the address of the rental unit, the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,

- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The tenant's position is that it also states: "I, the landlord, am hereby giving you two months' notice to move out of the rental unit located at: Surrey, BC." and no address has been written in those spaces. However, the address of the rental unit is written in the portion starting with: "TO the TENANT(s)." It is also dated and signed by an agent for the landlord, and I find that only putting the address of the rental unit on in one place and not the other does not invalidate the Notice.

With respect to the tenant's preliminary issue regarding the effective date of vacancy, the *Act* also specifies that incorrect effective dates are changed to the nearest date that complies with the law:

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Therefore, I am not satisfied that because the effective date of vacancy is incorrect, it invalidates the Notice, and it is changed to the nearest date that complies with the law. The landlord's agent testified that rent is payable on the 1st day of each month, and the tenant did not dispute that. Since the Notice was served on March 28, 2018 the effective date of vacancy is May 31, 2018.

I have also read the evidentiary material of the parties, particularly the notarized letter provided by the landlord's son who states he will be residing in the rental unit. The tenant testified that the landlord wanted to increase rent, and the tenant was also told about renovations, but there is no evidence to corroborate that, and there is evidence from the landlord's son.

The landlord is aware of the consequences for not using the rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property. I find that the balance of probabilities lies with 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 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. I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property and I find that it is in the approved form. Having found that the effective date of vacancy is changed to May 31, 2018, I grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on that date.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective May 31, 2018 at 1:00 p.m.

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: May 10, 2018

Residential Tenancy Branch