



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This decision pertains to the Tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The Tenants seek to cancel the Landlords' Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice").

The Tenant (D.F.) and Landlords attended the hearing before me, were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord B.N.'s spouse attended the hearing as a witness, and was affirmed.

The Tenant testified that they served the Notice of Dispute Resolution Proceeding package (the "Notice of Hearing") on the Landlords via registered mail. Copies of Canada Post registered mail tracking numbers were submitted into evidence. I am satisfied that the Landlords have been served pursuant to section 89 (1) (c) of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application will be considered in my decision.

Issue to be Decided

Are the Tenants entitled to a cancellation of the Landlords' Notice?

Background and Evidence

The Landlord B.N. testified that they and their spouse (V.N.) sold their house in Calgary a few years ago, where they had been living, and they have decided to move into the rental unit. B.N. and V.N. testified that since the sale of the house, they have been living in a trailer, and that most of their household possessions are being kept in storage. B.N. testified that they let the Tenants know about their intention to move into the rental unit

some time back. The parties were unable to reach an agreement as to when the Tenants would move out, which gave rise to the Landlords issuing the Notice. The Landlords testified that they are tired of living in the trailer, do not have anywhere else to live, and, do not wish to pay for ongoing storage costs.

Landlord B.N. testified that they served the Notice on the Tenant D.F. in-person on March 28, 2018, with an end of tenancy date of May 31, 2018. V.N. testified that they witnessed this in-person service.

The Tenant testified that they have been tenants for approximately six years. The Tenant did not dispute the grounds on which the Landlords are issuing the Notice, but rather, seeks an extension of the end of tenancy date. The Tenant testified that they tried to work out a vacancy date of September 1, 2018 (at the latest), but that the Landlords were not amenable to this. The Tenant further testified that their family is simply not in a financial position to vacate by May 31, 2018.

The Tenant testified that they have “been waiting on a windfall of cash” but that until then, they have no financial means to even hire a moving truck. In addition, the Tenant testified that they have a family and a child with special needs, which makes the situation more difficult.

The parties raised separate issues concerning unpaid and late rent. Landlord D.N. testified that they are “the financial person” responsible for rent and mortgage matters on the rental unit. I advised the parties that these issues were assigned to a separate dispute resolution hearing scheduled for June 26, 2018, and that my decision would only pertain to the current application and issue.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 49 (3) of the Act states that “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.”

The Landlord B.N. and their spouse V.N. testified that they intend to occupy the rental unit. They are no longer interested in living in a “caravan trailer” and no longer wish to pay thousands of dollars a month for storage costs. The Tenant did not dispute or call into question the Landlords’ intention or good faith to occupy the rental unit. The Tenant’s argument is that they need more time to vacate the rental unit. The Landlords testified that they need to move into the rental unit as soon as possible, and cannot wait any longer.

Therefore, taking into consideration all of the evidence and testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have met the onus of proving the grounds on which the Notice is based.

As such, I dismiss the Tenants’ application to cancel the Notice. The Notice, dated March 28, 2018, and effective May 31, 2018, is upheld. The Landlords are entitled to an order of possession effective June 1, 2018, pursuant to section 55 (1) of the Act.

Conclusion

I dismiss the Tenants’ application to cancel the Notice. The Notice, dated March 28, 2018, and effective May 31, 2018, is upheld. The Landlords are entitled to an order of possession effective June 1, 2018, pursuant to section 55 (1) of the Act. This order may be filed in and enforced as an order of 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 22, 2018

Residential Tenancy Branch