



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX OCEANVIEW REALTY - AGENTS FOR OWNER: AL B
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNR, MNDC, OLC, ERP, RP, LRE, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for an order restricting the landlord's entry to the rental unit, directing the landlord to carry out repairs and comply with the *act*. The tenant applied for a monetary order for compensation and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself. The landlord's agent also attended the hearing.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

In this regard I find the tenant has applied for multiple remedies which include an order for the landlord to comply with the *Act*, for an order for the landlord to make repairs and for a monetary order. As these sections of the tenant's application are unrelated to the main section which is to cancel the one month notice to end tenancy for landlord's use of property, I dismiss these sections of the tenant's claim with leave to reapply.

Accordingly this hearing only dealt with the tenant's application to set aside the notice to end tenancy.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to move into the rental unit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The rental unit consists of a three bedroom fully contained suite located on the upper floor of a two-level home. The landlord occupies the lower level. The monthly rent is \$1,600.00 due on the first of each month and does not include utilities.

On March 18, 2019, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property to be effective on May 31, 2019. The reason the landlord gave the notice to the tenant is described as, the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The tenant disputed the notice in a timely manner.

The landlord testified that he built the home about 35 years ago with intentions of living in the home after retirement. The landlord testified that the home is located on the coast and that he has lived part time in the home for past 15 – 20 years. The landlord stated that he is now 80 years old and would like to live in the home full time. He would also like to move into the upper level and leave the lower level available for use by his family which consists of his children and grand children, when they come to visit him. The landlord confirmed that he has no intention of renting out any portion of the unit and that he wants the entire home for his own use.

The tenant stated that the upper suite is in need of repairs which the landlord has failed to carry out. The tenant also referred to the four month notice to end tenancy for demolition, renovation, repair or conversion of rental unit that the landlord had served him in January 2019 and then cancelled it after the tenant made application for dispute resolution. The tenant stated that the landlord owns two other homes in the area which he has rented out and could also use one of them instead. The tenant stated that he believed that the landlord is ending the tenancy "*out of spite and as a way to not complete any of the repairs required.*" The tenant also believes that a previous tenant who is not a family member will be moving into the suite after he moves out.

Analysis

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove they are acting in good faith.

Based on the sworn testimony of the landlord, I find on a balance of probabilities that it is more likely than not that the landlord intends in good faith to spend his retirement in the home he built for that purpose. The landlord is also advanced in age and therefore it seems reasonable that he would like to spend his retirement on the coast in a home built by him. I also accept the testimony of the landlord regarding moving into the rental unit and leaving the lower level available for his children and grandchildren to use when visiting.

The tenant argued that the landlord has failed to act in good faith and in the absence of any evidence to support this allegation; I find the landlord has met the good faith requirement of the legislation and intends to move into the rental unit. Therefore, I find that the notice to end tenancy must be upheld and accordingly I dismiss the tenant's application.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the landlord has met the good faith requirement, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order

may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. The landlord agreed to allow the tenant more time to move out and therefore the tenancy will continue till June 30, 2019

The tenant has not proven his case and must bear the cost of filing his application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by **1:00 p.m. on June 30, 2019.**

The remainder of the tenant's application is dismissed with leave to reapply.

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 02, 2019

Residential Tenancy Branch