



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1006189 BC LTD
Pace Realty Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 16, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a One Month Notice for Cause dated November 12, 2020 (the "One Month Notice").

The Tenant, the Tenant's Advocate P.L., the Landlord, and the Landlord's Agents W.F., and H.M. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed that the fixed term tenancy began on September 9, 2020 and is meant to end on September 30, 2022. Currently, the Tenant is required to pay rent in the amount of \$2,000.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$1,000.00 both of which the Landlord continues to hold.

The Landlord's Agents stated that they served the Tenant in person with the One Month Notice on November 12, 2020 with an effective vacancy date of December 12, 2020. The Tenant confirmed having received the One Month Notice. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Rental Unit/Site must be vacated to comply with a government order."

The Landlord's Agents stated that they received a letter from the City dated October 28, 2020 stating that the rental property may be in non-compliance with the Municipal Code regulations regarding permitted dwelling units. The Letter refers to the fact that there are four dwelling units, while the rental property is currently zoned for a two-family dwelling. The letter requests that the Landlord arrange for inspections to confirm compliance with the Municipal Code no later than December 14, 2020 or else further action may be taken. The Landlord's Agents stated that the Landlord is not willing to apply for a rezoning permit at this time as it is a lengthy and costly process.

The Tenant's advocate stated that the letter provided by City is not a legal order requiring the Tenant to vacate the rental unit. The Tenant's Advocate stated that no one from the City has attended the rental unit to inspect the rental property and that the Letter only indicates that the rental property "may" be in non-compliance. As such, the Tenant's Advocate stated that the letter does not constitute a Government Order as indicated in the One Month Notice.

Furthermore, the Tenant's Advocate stated that the Tenant is the sole occupant in the one half of the duplex, while the other half of the duplex has an upper and a lower occupant. The Landlord's Agents confirmed this as well. As such, the Tenant's Advocate stated that the Letter from the City only refers to the Tenant's address in her half of the duplex. The Tenant's Advocate stated that the Tenant is therefore in compliance with the current City's Municipal Code.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause dated on November 12, 2020 with an effective vacancy date of December 12, 2020. The Tenant confirmed having received the notice. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I accept that the Landlord has received a letter from the City dated October 28, 2020 stating that the rental property may be in non-compliance with the Municipal Code regulations regarding permitted dwelling units. I find that the letter requests that the Landlord arrange for inspections to confirm compliance with the Municipal Code no later than December 14, 2020 or else further action may be taken. I find that this is not a Government Order directing the tenancy to end. Furthermore, I find that the Landlords have provided insufficient evidence to demonstrate that the Tenant residing in one half of the duplex violates any specific regulations.

In light of the above, I cancel the One Month Notice, dated November 12, 2020. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated November 12, 2020 is cancelled. The tenancy will continue until ended in accordance with the Act.

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: February 05, 2021

Residential Tenancy Branch