

DECISION

Dispute Codes CNL OPT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for the landlord's use of property and to obtain an Order of Possession.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on March 13, 2009 and March 20, 2009. Mail receipt numbers were provided in the tenant's verbal testimony. The landlord was deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to cancel the Notice to End Tenancy
- Whether the tenant is entitled to an Order of Possession

Background and Evidence

The tenant has occupied the rental property since approximately August 1984. The current landlord purchased the land which houses the rental property in 1995 at which

time she continued on with a verbal tenancy agreement with the tenant. Rent is \$225.00 per month and is payable on the first of each month.

The landlord testified that the tenant has not paid April 2009 rent, but is considering it paid as the tenant is applying the one month rental compensation in response to the notice to end the tenancy, pursuant to Section 51 of the *Act*.

The rental unit is referred to, by the landlord, as a picker shack, which the landlord stated is located on the property with another rental house. The landlord testified that she owns the adjacent piece of property and it is her intention to incorporate both properties into one and expand her soft fruit orchard.

A 2 Month Notice to End Tenancy was issued by the landlord on February 24, 2009, with an effective date of April 30, 2009, and served to the tenant by a professional process server on February 24, 2009 in the late afternoon, in the back yard of the rental property. The tenant confirmed this service in his verbal testimony.

The landlord testified that although she has owned the property since 1995, she was living abroad up until she returned to reside at the property in July of 2008. The landlord stated that she is establishing her home on the property now and wants to move forward with her plans to expand her orchard, build a fence around her property and has already removed a hedge that divided the two properties. She stated that the demolition of the picker shack rental property has been pending since last fall and that she wanted to be fair to the tenant and not evict the tenant until the spring.

The landlord submitted documentary evidence proving that the required demolition permits and inspection permits were obtained February 23, 2009, prior to the notice to end tenancy was issued to the tenant. The landlord testified that the demolition company has been tentatively scheduled for the end of May 2009, pending the outcome of this hearing.

The tenant testified that he has lived on the property over 25 years, created a beautiful park like setting, planted trees and maintained the yard. The tenant stated that he took offence to his home being referred to as a picker shack and that others have commented how cute his house was. He stated that he does not have garbage stored around the property, but that he does have a lot of possessions, yard tools and equipment stored in a shed and around the property.

The tenant testified that the rental unit was not a fire hazard and that the landlord had paid to repair the roof just 4 ½ years ago. The tenant is requesting some compassion to allow him to stay in the rental unit as he is living off a reduced income and cannot afford to pay the high cost of rent charged elsewhere.

Analysis

The tenant has applied to cancel a notice to end tenancy sixteen (16) days after the notice was served. The *Residential Tenancy Act* stipulates that a tenant may dispute a notice to end tenancy by making an application for dispute resolution within fifteen (15) days after the date the tenant receives the notice. If the tenant fails to make application in accordance with the *Act* the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date, pursuant to Section 49 (8) of the *Act*.

The landlord has requested an Order of Possession be issued, effective April 30, 2009, based on the 2 Month Notice to End Tenancy that was served on the tenant on February 24, 2009.

The tenant has occupied this rental unit for over 25 years, in a manner that has allowed him the freedom to work the surrounding land and to collect and store property around the rental unit up until the owner returned in July 2008. Given the length of the tenancy I can see how the tenant feels a sense of ownership to the area, but must remind the tenant that the landlord is the rightful owner of the property and is entitled to make

changes to the property providing she follows the rules and regulations set forth by the governing authorities.

Based on the landlord's testimony and the documentary evidence supplied by the tenant, the tenant was advised by the landlord prior to December 2008 that there would be changes forthcoming, and that the landlord did show compassion in not issuing the notice to end tenancy during the winter months so not to have the tenant move during the cold weather.

In this case the landlord must provide evidence to prove the "good faith" requirement for the reasons given on the Notice to End Tenancy by first truly intending to use the premises for the purposes stated, in this case to demolish the rental unit, and secondly the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

The landlord has provided documentary evidence, such as the required municipal permits, and a quote from a demolition company in support of her claim. I find based on this documentary evidence and verbal testimony, that the landlord intends in good faith to demolish the rental unit and grant an Order of Possession to the landlord effective April 30, 2009.

The landlord and tenant came to an agreement that although the tenant will be required to vacate the rental unit by 1:00 pm on April 30, 2009, that the tenant will be allowed to store some of his personal belongings in the outside storage shed located in the yard at the rental unit, until 1:00 p.m. on May 15, 2009, if so required.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **April 30, 2009 at 1:00 p.m.** This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: April 15, 2009.

Dispute Resolution Officer