



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: CNL

Introduction

The hearing was convened to deal with the tenant's request to cancel a *Two Month Notice to End Tenancy for Landlord's Use* dated December 11, 2013 with the effective date extended by consent of both parties to May 1, 2014. The reason given for ending the tenancy was because the unit will be occupied by the landlord/owner of the property.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

The tenant is alleging that the *Two Month Notice to End Tenancy for Landlord's Use* was issued in bad faith and therefore should be cancelled.

Issue(s) to be Decided

Should the *Two Month Notice to End Tenancy for Landlord's Use* be cancelled?

Background and Evidence

The tenancy began over 30 years ago and the current rent is \$500.00 per month.

The landlord submitted into evidence a copy of land registry documents dated November 12, 2013, that confirm the respondent landlord owns the property in fee simple.

The landlord testified that the *Two Month Notice to End Tenancy for Landlord's Use* was issued and served on the tenant because the landlord and her partner intend to reside in the home now occupied by the tenant.

The tenant argued that the landlord's ownership of the property was subject to a challenge before the Courts between two parties that did not include the tenant. Documents in evidence confirm that an application had been made and a certificate of pending litigation was issued by the Registrar on April 15, 2014. However further letters and documents confirmed that this litigation between the two claimants was no longer in process and a Consent Dismissal Order had been filed.

The tenant further argued that the tenants were verbally promised that they could live in the home for as long as they wanted. A letter from the former owner verified that this was understood by both parties when the tenancy was founded.

The tenant stated that their interest in the property exceeded that of being merely a tenant and in fact they have an "*unregistered life estate*" entitling them to remain in possession of the home. The tenant's position is that this legal obligation was transferred along with the title of the property from the original owner who apparently made the verbal promise, to the respondent landlord and the new owner is therefore bound by it.

The landlord stated there are no civil suits or other matters currently before the courts challenging her title to the property and she remains the owner in fee simple. The landlord testified that there is no registered life estate restriction attached to the land title. The landlord pointed out that historic verbal representations or mutual arrangements made between the former owner/landlord and the tenants are not applicable to the current status of this tenancy under the Act.

The landlord pointed out that they have been generous with the tenant by postponing the end of the tenancy by several months and offering an extra month compensation beyond the one month required under the Act. The landlord also pointed out that the tenant had signed a mutual agreement consenting to a move-out date of May 1, 2014. A copy of this document is in evidence.

The landlord's position is that an owner of a rental property has a valid right under the Act to occupy their own property by serving the tenant with a Two Month Notice to End Tenancy for Landlord's Use in good faith. The landlord requests that the tenant's application be dismissed and the landlord be issued with an Order of Possession based on the Notice

Analysis Two Month Notice to End Tenancy for Landlord's Use

In regard to the respondent's status as owner of the property, I accept that the landlord does own the property in fee simple as confirmed by the land title registry documents.

I also accept that there may have been a challenge of the ownership status through the Supreme Court, but the matter has been resolved and the respondent is the owner.

Section 49(5) provides 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.. (my emphasis).

The tenant has raised an issue questioning the landlord's good faith intentions.

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant or use this section to resolve problems with the tenancy, or make a financial gain, then the landlord does not have a "*good faith*" intent.

The burden is on the landlord to establish the landlord's good faith intent. In this instance, the landlord gave verbal testimony and explained that the landlord needs to move into this larger space and has been delayed from doing so for a lengthy period of time.

Based on the evidence before me, I accept that the landlord genuinely intends to move into the property. I do not find sufficient evidence that the landlord is acting in bad faith. Nor do I find evidentiary support for the tenant's contention that the owner has an ulterior motive for issuing the *Two-Month Notice to End Tenancy*.

In regard to the tenant's claim that he possesses a verbal, "unregistered life estate", which entitles the tenant to live in the unit indefinitely, I find that any valid legal attachment to a property must be registered on the title to be recognized in the Province of B.C.

Moreover, even under the Residential Tenancy Act, Section 6(3) of the Act states that a term of a tenancy agreement is **not enforceable** if: (a) the term is inconsistent with the Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (My emphasis).

I find that a verbal tenancy term that is being disputed is not clear and therefore, pursuant to section 6(3) of the Act, is not enforceable.

Given the above, I find that the landlord has furnished sufficient evidentiary proof to support that this tenancy is being ended in good faith under section 49 of the Act.

For this reason, I find no valid reason to cancel the *Two Month Notice to End Tenancy for Landlord's Use* dated December 11, 2013.

I find that, in the event that the landlord does not follow through with implementing the rental unit for the stated use specified in the Notice, in this case taking occupancy of the rental premises, the tenant is at liberty make another application seeking compensation.

When a *Two-Month Notice to End Tenancy for Landlord's Use* has been issued under section 49 and the landlord fails to utilize the rental unit for the purpose stated in the Notice, then section 51(2) of the Act requires the landlord to pay additional compensation to the tenant.

Based on evidence and testimony put forth at the hearing, I hereby dismiss the tenant's application to cancel the *Two Month Notice to End Tenancy for Landlord's Use*.

At the hearing, the landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy.

I grant the landlord an Order of Possession based on the following terms:

- The tenant must vacate the unit on or before August 1, 2014 and the landlord is granted an enforceable Order of Possession effective on that date.

Notwithstanding the Order of Possession terminating the tenancy on August 1, 2014, should the tenant manage to find a suitable place to relocate prior to August 1, 2014, under the Act, the tenant is still at liberty to end the tenancy even earlier by:

- (a) giving the landlord at least 10 days' written notice to end the tenancy
- (b) paying to the landlord, on the date the tenant's notice is given, only the proportion of the rent due for the pro-rated part of the month based on the s departure date. This is a statutory right under section 50 of the Act.
- However, if the tenant has already been credited for, or paid the landlord for, the entire month's rent before giving the 10 day advance notice to vacate, the landlord must then refund any portion rent paid or credited for a period that falls after the effective moving date on the tenant's 10 Day notice.
- The tenant's choice to move earlier than August 1, 2014 does not affect their right to receive the equivalent of one month compensation under *section 51 above*.

I hereby grant the landlord an Order of Possession based on the *Two Month Notice to End Tenancy for Landlord's Use*, effective Friday August 1, 2014 at 1:00 p.m. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant is not successful in the request to cancel the *Two Month Notice to End Tenancy for Landlord's Use* and the landlord is issued an Order of Possession based on the *Two Month Notice to End Tenancy for Landlord's Use*.

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: June 24, 2014

Residential Tenancy Branch

