



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF
OPL

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 2 month notice to end tenancy for landlord's use of property / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing the landlord confirmed that she seeks an order of possession in the event the tenant's application does not succeed.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to 3 separate written tenancy agreements, the fixed terms of tenancy formally entered into by the parties are as follows: i) August 01, 2010 to July 31, 2011; ii) August 01, 2011 to July 31, 2012; and iii) August 01, 2012 to July 31, 2013.

After July 31, 2013 the fixed term tenancy appears to have become a periodic / month-to-month tenancy, however, there is evidence of exchanges between the parties around whether the tenant was required to vacate the unit following the end of the fixed term on July 31, 2013. The relevant clause in the tenancy agreement is as follows:

16. SURRENDER OF PREMISES. Upon the expiration of the term hereof, Lessee shall surrender the Premises in as good a state and condition as they were at the commencement of this Agreement, reasonable use and wear and tear thereof and damages by the elements excepted. This includes having all rugs, appliances, floors and bathrooms professionally cleaned.

While one or both of the parties sought information from the Branch in relation to the interpretation of clause # 16, the matter is not now, and has not previously been before an Arbitrator in a hearing for the purpose of obtaining a formal finding on the matter.

Monthly rent of \$1,200.00 is due and payable in advance on the first day of each month, and a security deposit of \$575.00 was collected. It is not known whether a move-in condition inspection report was completed.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated June 26, 2014. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is August 31, 2014. The reason identified on the notice in support of its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Thereafter, the tenant filed an application to dispute the notice on July 07, 2014. The tenant claims that it is not the landlord's intention to use the unit for reasons identified on the notice. Rather, the tenant claims that the landlord intends either to sell the unit, and / or to re-rent it at a higher level of monthly rent than what he now pays. Despite the tenant's claims, the landlord gave affirmed testimony to the effect that it is currently her intention to use the unit for the reasons identified on the 2 month notice. It is apparent that the relationship between the parties has very recently deteriorated.

Analysis

Based on the documentary evidence and the affirmed testimony of the parties, I find on balance that it is currently the landlord's intention to use the unit for the reasons identified on the 2 month notice to end tenancy for landlord's use of property. While the landlord has previously made efforts to sell the unit, there is no conclusive documentary evidence before me that the unit is currently listed for sale. Neither is there any evidence of a history of discord between the parties in relation to the amount of the monthly rent. In the result, the tenant's application for cancellation of the 2 month notice is hereby dismissed, and I find that the landlord has established entitlement to an **order of possession**. Following consideration of the different perspectives set forth around the effective date of the order of possession, I find that the order of possession is to be effective **October 31, 2014**.

Below, the attention of the parties is drawn to sections of the Act which specifically pertain to the circumstances of this dispute.

Section 49 of the Act addresses **Landlord's notice: landlord's use of property**, in part:

49(3) 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.

Section 49(1) of the Act defines "close family member" as follows:

"close family member" means, in relation to an individual,

- (a) the individual's father, mother, spouse or child, or
- (b) the father, mother or child of that individual's spouse;

Section 50 of the Act speaks to how **Tenant may end tenancy early following notice under certain sections**:

50(1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

- (a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and
- (b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Section 51 of the Act addresses **Tenant's compensation: section 49 notice**:

51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

As the end of tenancy nears, the parties are referred to the provisions in section 37 of the Act, which speaks to **Leaving the rental unit at the end of a tenancy**, and section 38 of the Act, which addresses **Return of security deposit and pet damage deposit**.

Finally, the attention of the parties is drawn to the following legislation:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

As to the tenant's application to recover the filing fee, I find that as the landlord has achieved an outcome sought by her from the hearing, the burden of paying the filing fee ought to be equally shared. Accordingly, I find that the tenant has established

entitlement to recovery of **\$25.00**, or half the filing fee. In this regard I grant the tenant a **monetary order** in his favour for that amount.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **October 31, 2014**. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$25.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims 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: September 12, 2014

Residential Tenancy Branch

