



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on November 7, 2014, to obtain an Order to cancel a 2 Month Notice to end tenancy for landlord's use and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord, her Agent, the Tenant, and the Tenant's assistant. Each party who provided evidence gave affirmed testimony. The Landlord's Agent provided the oral testimony on behalf of the Landlord.

The parties confirmed receipt of evidence served by the Tenant. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the 2 Month Notice to end tenancy issued October 27, 2014 be upheld or cancelled?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a tenancy that commenced on June 1, 2006. The Tenant is required to pay rent of \$500.00 on or before the first of each month and no security deposit was required to be paid. On October 27, 2014 the Tenant received by mail, a 2 Month Notice for landlord's use of the property which listed the following reason(s) for ending the tenancy:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

A hand written notation that states “or extend to Jan. 31, 2014” followed by the Landlord’s initials is written beside the following sentence on page 2 of the Notice:

If a tenant has already paid the last month’s rent, the landlord must refund the rent as the compensation.

The Tenant submitted documentary evidence which included her written statement and an email from the municipality which indicates that no building permits have been issued for the rental property. A second email was provided and was issued from the Landlord that stated as follows:

Deb has possible buyers two of whom would like to keep you as a tenant. How is your search going?

The Agent submitted that the Tenant rents one of two parcels of the property the Landlord owns, which is approximately 1.5 acres with a 2 bedroom cabin. He stated that the Landlord listed the property for sale in March 2014 and in recent communications with the real estate agent they determined that if they did some repairs, redecorating, and removed some of the stored items from the basement, they may be able to make the property more appealing to prospective buyers. They submitted that the cabin was modest and was not contributing to the sale of the property so they need to do a redesign and/or re-management of the property. As a result, they issued the Tenant the 2 Month Notice.

The Agent testified that the repairs and redecorating would involve removal of the items in the basements, painting, and what he referred to as “floor management”. He stated that the Landlord would be willing to rescind the eviction notices if the Tenant was willing to help with redecorating and removal of the stored items. He stated that they were not aware of any requirement to obtain a permit to conduct the work they were wishing to complete.

The Tenant testified that she wishes to remain occupying the rental property and is willing to accommodate the Landlord in their repairs or redecorating. She indicated that the only items she had in the basement were all stored inside plastic containers and piled in one section of the basement. The remaining items were in the basement when she first moved into the unit. The Tenant submitted that she has sent the Landlord postdated rent cheques to support her desire to remain in the rental unit.

The Agent had indicated that the real estate agent has shown the property to prospective buyers; however, the Tenant submitted that she was never issued a notice

of entry nor was she told that the property would be shown. As a result, I issued the Landlord an oral Order as follows:

The Landlord was ordered to inform their real estate agent of the requirements to provide the Tenant with advance notice, prior to showing the property, in accordance with section 29 of the Act. [Section 29 has been copied to the end of this decision for review]. Section 29 of the Act applies to the Landlord or any authorized agents, such as a real estate agent.

Analysis

Issuing a Notice to End Tenancy for Landlord's Use of Property requires that the Landlord meet or satisfy two tests as set forth under the *Residential Tenancy Act*. Section 49 (6) (b) of the *Residential Tenancy Act* states that a landlord may end a tenancy in respect of a rental unit if:

- 1) The landlord has all the necessary permits and approvals required by law;
- 2) And intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Permits - Based on the testimony and documentary evidence I find that the Landlord has not met the test for acquiring all the necessary permits and approvals required by law to perform the intended renovations.

Good Faith - The *Residential Tenancy Policy Guideline # 2* sets out the two part test for the "good faith" requirement as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and
- 2) 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.

The undisputed evidence was that the Landlord had listed the property for sale and issued the 2 Month Eviction Notice after receiving suggestions from their real estate agent that the rental unit needed some maintenance and or upgrading. The Agent submitted that the Landlord was willing to cancel the 2 Month Notice if the Tenant agreed to help with the required work.

While it may be more desirable to sell or less costly for a Landlord to conduct upgrades or maintenance on a rental property, those are not grounds for an eviction as provided under the Act. In this case the evidence does not support the reasons for which the 2 Month Notice was issued, as the work that is planned does not require permits and does not require the unit to be vacant. Rather, the evidence supports that the type of repairs and or maintenance the Landlord wishes to engage in, such as removal of stored items from the basement, painting, or flooring repairs, do not require a vacant rental unit.

Furthermore, I must note that a landlord cannot require or coerce a tenant into agreeing to complete maintenance or repairs which are a landlord's responsibility, in exchange for cancelling an eviction notice.

Based on the above, I find the evidence proves the Landlord had an ulterior motive in issuing the 2 Month Notice. Therefore, I uphold the Tenant's application and I order the 2 Month Notice to be cancelled.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee. As the Tenant had issued the Landlord postdated rent cheques, I order the Landlord to pay the Tenant the \$50.00 filing fee, forthwith.

Conclusion

The 2 Month Notice to end tenancy issued October 20, 2014, is HEREBY CANCELLED and is of no force or effect. This tenancy continues until such time as it is ended in accordance with the Act.

The Tenant has been issued a Monetary Order for **\$50.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia 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: December 15, 2014

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

