



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for the Landlord's Use of the property and for the Landlord to Comply with the Act, regulations and tenancy agreement.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on August 18, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on February 1, 2016 as a fixed term tenancy for 6 months and then continued on month to month tenancy. Rent is \$935.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$450.00 at the start of the tenancy. No move in condition inspection report was completed at the start of the tenancy.

The Landlord said she served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated August 8, 2017. The Notice has an effective vacancy date of October 1, 2017 which the Arbitrator told the Landlord is incorrect. The Arbitrator said the effective vacancy date should be November 1, 2017 and pursuant to section 53 of the Act the effective vacancy date automatically is changed to the correct date. The Tenant asked if this invalidates the Notice to End Tenancy. The Arbitrator said correcting an incorrect effective vacancy date on any Notice to End Tenancy does not invalidate the Notice.

The Landlord continued to say that they have sold their primary residence and they now want to move into the rental unit. The Landlord said they have purchased a new home but it requires extensive renovations and they are going to live in the rental unit until the renovations are completed in the new home. The Landlord said the reason on the 2 Month Notice to End Tenancy for Landlord's Use of the Property is that the Landlord is moving into the rental unit. The Landlord submitted sale agreements for both their previous home and the new home they purchased. The Landlord said the sale on their previous home closed on November 3, 2017 so the Landlord's family is without a residence at the present time. The Landlord said this is

because the Tenant has not moved out of the rental unit. The Landlord said she is requesting to end the tenancy as soon as possible so her family can move into the rental unit.

The Tenant said he believes the 2 Month Notice to End Tenancy for Landlord's Use of the Property is invalid for a number of reasons. First the Landlord did not serve him prior to when the day the rent was due with the correct documentation. Secondly the written Notice has the incorrect effective vacancy date on it which the Tenant said invalidates the Notice. Thirdly he does not think the Landlord and her family will move into a bachelor rental unit. The Tenant said the unit only has one bedroom and so he does not think the Landlord is being truthful. Further the Tenant said the Landlord wants the rent to be paid in cash and he gave the Landlord a cheque for the rent which the Tenant believes resulted in this Notice to End Tenancy as retaliation for not paying in cash. The Tenant said he does not think the Notice is valid and he does not believe the Landlord is going to move into the rental unit for any length of time. The Tenant requested the Notice to End Tenancy dated August 8, 2017 to be cancelled.

The Landlord said in closing she wants to end the tenancy so she and her family can move into the rental unit.

The Tenant said in closing that he believes the Landlord is not acting in good faith and the Landlord and her family will not move into the rental unit for any length of time. Further the Tenant said he thinks the Landlord will continue to rent the unit in the future to a tenant that will pay cash.

Analysis

Section 49 (3) of the Act says: 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.

A Landlord has the right to end a tenancy if the rental unit is being used for the owner or a close family member. I accept the Landlord's affirmed testimony that the Landlord and her family are moving into the unit as soon as they are able too. Consequently, I find the Tenant has not established grounds to prove the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated August 8, 2017 is not valid. I dismiss the Tenant's request to cancel the Notice to End Tenancy dated August 8, 2017 and pursuant to section 55 of the Act I grant the Landlord an Order of Possession effective 2 days after service of the Order on the Tenant.

The effective vacancy date on the Notice to End Tenancy dated August 8, 2017 is October 1, 2017 which is incorrect and this date is automatically corrected under section 53 of the Act to the correct date of November 1, 2017. As the effective vacancy date on the Notice to End Tenancy has been corrected to November 1, 2017 and this date has past the Order of Possession is for two days after service of the Order on the Tenant. .

With regard to the Tenant's claim that the Landlord has not complied with the Act, regulations and tenancy agreement; I find that the Tenant has not established grounds to prove the Landlord has not complied with the Act, regulation and tenancy agreement. The Landlord issued a Notice to End Tenancy for Landlord's Use of the Property and the Landlord gave

affirmed testimony that they are moving into the rental unit as soon as the Tenant moves out. This action by the Landlord complies with the Act, regulations and tenancy agreement. .

Further I order the Landlord to compensate the Tenant the equivalent of one month's rent as required under the Act when issuing a 2 Month Notice to End Tenancy for Landlord's Use of the Property in the amount of \$935.00. As well since the Landlord did not complete a move in condition inspection report, as required pursuant to section 24 of the Act, the Landlord's claim against the Tenant's security deposit is extinguished. The Landlord has 15 days from the end of tenancy to return the Tenant's security deposit.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

The Landlord is ordered to compensate the Tenant \$935.00 for the Landlord ending the tenancy and the Landlord is ordered to return the Tenant's security deposit in the amount of \$450.00 with in 15 days of the end of tenancy.

An Order of Possession effective 2 days after service has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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: November 7, 2017

Residential Tenancy Branch