



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On October 10, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a Two-Month Notice to End Tenancy for Landlord’s Use of Property. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Two-Month Notice to End Tenancy for Landlord’s Use of Property, dated September 26, 2018 (the “Notice”), be cancelled, in accordance with Section 49 of the Act?

If the Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Background and Evidence

The Landlord and the Tenant agreed on the following terms of the tenancy:

The month-to-month tenancy began sometime around August 1, 2000. The rent is \$600.00 a month. At the beginning of the tenancy, the Landlord collected a \$300.00 security deposit.

The Landlord testified and provided documentary evidence, that he is intending on ending the tenancy as he has recently been forced out of a shop where he stores his equipment for two businesses. The Landlord stated that he requires both covered and open storage for vehicles, equipment, fencing materials and tools. The Landlord stated that the rental unit and surrounding yard will provide him the space he needs to move his business. The Landlord acknowledged that he has attempted to negotiate the sharing of space with the Tenants over the years; however, it has not worked out and now that he has been forced out of his commercial space, he requires the use of the rental property. The Landlord stated that the area is zoned C-3, which, he says, will work out well for his business.

The Landlord stated that he personally served the Notice to the Tenants on September 26, 2018. The Notice provided the move-out date of November 30, 2018. The Landlord advised the Tenants, via the Notice, that the reason for the end of tenancy was that the rental unit will be occupied by the Landlord.

The Landlord acknowledged that the Tenants are a family and will require some time to find new accommodations. The Landlord agreed that, if an Order of Possession was issued, that it could be for the effective date of February 28, 2019.

The Tenant and his advocate testified that the zoning of the rental property is C-1 which is zoned for residential and commercial and may not suit the Landlord's business requirements. The Tenant stated that he offered the Landlord the storage that he needed on the property, but the Landlord would not sign the agreement. The Tenant does not believe that the Landlord needs the entire rental property for his business.

The Tenant stated that the Landlord issued the Notice in bad faith as the parties recently had a Dispute Resolution hearing where the Landlord's notices to end tenancy were cancelled.

The Tenant hopes to come to some sort of an agreement with the Landlord to continue the tenancy.

Analysis

Section 49(3) of the Act states that a Landlord may end a tenancy in respect of a rental unit if the Landlord intends in good faith to occupy the rental unit.

Where a Tenant applies to dispute a Two Month Notice to End Tenancy, the onus is on the Landlord to prove, on a balance of probabilities, the reasons on which the Notice is based.

I accept the Landlord's testimony and evidence that he plans to occupy the rental unit/property by storing the equipment for both of his businesses at and in the premises. The Tenant failed to provide sufficient evidence to prove that the Landlord was not going to follow through with the occupation of the rental unit. I find that the Landlord has proven that he intends to occupy the rental unit.

The Tenant attempted to bring the good faith intent of the Landlord into question by relating the service of the Notice to the recent loss of a previous arbitration where the Landlord's notices to end the tenancy were cancelled. As this was the only submission the Tenant provided, I find that he has failed to provide sufficient evidence to support that the Landlord is intending to act dishonestly or has an ulterior motive.

As a result of the testimony and evidence presented today, I dismiss the Tenants' Application to cancel the Notice.

Section 55 of the Act requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a Notice to End Tenancy that is compliant with the Act.

Section 52 of the Act requires that any Notice to End Tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. I find the Notice, issued by the Landlord on September 26, 2018, complies with the requirements set out in Section 52.

As I've dismissed the Tenants' Application and the Notice complies with the Act, I find that the Landlord is entitled to an Order of Possession for the rental unit.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on February 28, 2019 at 1:00 p.m. This Order should be served on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of 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 20, 2018

Residential Tenancy Branch