



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNL

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Notice to End the Tenancy for Landlord's Use. The stated reason for issuing the Notice was that the home had been sold to a different owner and the buyer made a written request under section 49(5) that the suite be vacated so that the purchaser or close family member could inhabit the rental suite.

The landlord, the landlord's representative and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The tenant was seeking to cancel the Two-Month Notice for Landlord's Use issued on March 1, 2010 and purporting to be effective May 1, 2010. Therefore the issues to be determined based on the testimony and the evidence are:

- Did the landlord issue a valid and enforceable Two-Month Notice to End Tenancy for Landlord's Use?
- Has the landlord furnished proof that it prior to serving the Two Month Notice on the required form, the landlord had a written offer of purchase and sale for which all conditions had been removed?
- Has the landlord furnished proof that the purchaser requested in writing that the rental unit be vacant so that the purchaser or close family member could occupy the rental unit?

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was served on the tenant and that the above criteria was met to satisfy section 49(5) of the Act..

Background and Evidence

The tenancy began approximately 27 years ago and the tenant had paid a security deposit of \$200.00. The current rent was \$650.00 per month. The tenant testified that the Two-Month Notice should be cancelled based on the landlord having no legal cause to end the tenancy. The tenant testified that the new owner did not need to occupy the rental suite as the new owner could reside in the rest of the building and let the tenant remain in the lower unit. The tenant argued that the property was a rental and as such should remain a rental. The tenant testified that he was given legal advice that the landlord's Notice was not valid.

No copy of the Two-Month Notice was submitted into evidence. However, the parties both testified that the Two-Month Notice to End Tenancy was served on March 1, 2010 with an effective date of May 1, 2010 and the Notice form stated that the landlord was seeking to end the tenancy because:

“All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit”

The tenant did not offer evidence disputing that the property was sold, nor any evidence to refute that the purchaser had made a written request stating that the new owner or the owner's family intended to live in the rental unit. The tenant took the position that terminating the long term tenancy without compensation was unfair.

Further testimony was given by the tenant in regards to expenditures he had incurred and tasks he had performed on the landlord's behalf over the 27 years of the tenancy. The tenant testified that he felt there should be adequate monetary recognition for his

role in being a good tenant and taking care of things for the duration of the tenancy. The tenant stated that he had kept track of everything done and paid for during his tenancy and had an expectation that when the landlord finally decided to sell the house, he would be repaid. However, I found that this testimony and the additional issues brought forth were not relevant to the matter before me because they were not part of the tenant's original application for dispute resolution which pertained solely to a request that the Two-Month Notice be cancelled. The application did not include a request for a monetary compensation from the landlord for damages or losses allegedly suffered because of violations of the Act by the landlord during the tenancy.

The landlord testified that the property in question had been sold and the sale was due to be completed on May 1, 2010. The landlord testified that the new owner had submitted a written request asking that the Landlord issue and serve the tenant with a Two-Month Notice to End Tenancy for Landlord's Use. The landlord submitted into evidence a copy of the completed purchase agreement and a copy of the letter from the purchaser to the landlord dated February 27, 2010. This letter indicated that the buyer was hereby requesting:

"that you provide notice pursuant to s.49 of the Residential Tenancy Act to the tenant(s) in the basement suite..... I am the purchaser of the Property pursuant to a Contract of Purchase and Sale dated February 25, 2010. The grounds for this notice are that I or a close family member of myself intend in good faith to occupy the rental unit located at the Property".

The document was signed by the purchaser. The landlord testified that after receiving the official request in writing pursuant to section 49(5), the landlord complied by issuing an enforceable Two-Month Notice and serving it on the tenant to terminate the tenancy based on valid legal criteria under the Act. The landlord testified that the tenant had already been credited with the equivalent of one month rent required under section 51(1) of the Act.

The landlord's position was that all of the requirements under section 49(5) had been met and that the landlord had followed the law in every respect. The landlord stated that there was nothing in the Act that would allow the Two-Month Notice to be cancelled as the tenant was requesting.

Analysis

Section 49(5) states that a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(2) provides that a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

In this instance, based on testimony, I find that the Two-Month Notice served on March 1, 2010 was purported to be effective on May 1, 2010. In order to comply with the legislation and pursuant to my authority under section 53 of the Act, I find that the

earliest effective date to end the tenancy pursuant to this Two-Month Notice would be May 31, 2010.

The parties engaged in a mediated discussion in relation to the ending of this tenancy. The following outcome was mutually agreed-upon:

- The tenant will vacate the rental unit on May 31, 2010 at 1:00 p.m. and the landlord will receive an order of possession ending the tenancy on that date.
- Upon vacating on May 31, 2010, the tenant will receive \$3,500.00 compensation for terminating the tenancy and a monetary order will be issued.

In addition, pursuant to section 38 of the Act, I find that the tenant is entitled to the return of the security deposit of \$200.00 plus interest \$302.26 for a total of \$502.26.

No findings were made and no agreement was reached in regards to the other irrelevant allegations brought up by the tenant during these proceedings.

Conclusion

Based on the mutual agreement reached by the parties during these proceedings, I hereby grant the landlord an Order of Possession effective at 1:00 p.m. on Monday May 31, 2010. This order must be served on the tenant and can be enforced by the B.C. Supreme Court.

Based on the mutual agreement reached by the parties during these proceedings I hereby grant the tenant a monetary order in the amount of \$4,002.26 comprised of \$3,500.00 agreed-upon compensation and \$502.26 refund of the security deposit plus interest. This monetary order must be served on the landlord and can be enforced through Small Claims Court if necessary.

April 2010

Date of Decision

Dispute Resolution Officer