



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

OPL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the landlord's Two-Month Notice to End the Tenancy for Landlord's Use dated March 7, 2011 and purporting to be effective May 7, 2001. Both parties appeared and each gave testimony in turn.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the tenancy can be ended for landlord's use based on the Two Month Notice to End Tenancy or whether the Notice should be cancelled as requested by the tenant. The following determinations must be made:

- Was the two-month notice for Landlord Use issued and served in compliance with the Act?
- As the "good faith" intention was called into question by the tenant, has the landlord offered proof that all conditions on which the sale depends have been satisfied, and that the purchaser asked the landlord, in writing, to give notice to end the tenancy on the grounds that the purchaser, or a close family member, intends in good faith to occupy the rental unit?

Background and Evidence

The tenancy began in July 1989 and rent is \$1,630.00. A security deposit of \$750.00 was paid. The tenant submitted into evidence a copy of the Two-Month Notice to End Tenancy indicating that *"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 landlord testified that an offer to purchase was accepted and the new buyer gave the landlord a written request that the tenancy be ended because the buyer would be residing in the rental unit. The landlord did not submit a copy of the written request from the purchaser, nor a copy of the purchase agreement. The landlord's position was that the Notice to End Tenancy for Landlord's Use should be found to be valid.

The tenant raised the issue of bad faith and stated that there is some doubt that the purchaser genuinely intends on residing in the rental unit. The tenant hopes that the landlord's application will be dismissed so that the tenancy can continue.

The tenant stated that they were also concerned that the landlord would try to prevent them from removing the appliances that they had purchased during the tenancy. However, the landlord stated that the tenants would be permitted to take their own appliances when they leave.

Analysis

Under section 49(5) of the Act under, "*Landlord's notice: landlord's use of property*", the Residential Tenancy Act 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 the ground that 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;

In this section the definition of "*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;

The tenant has asked that the Two Month Notice to End Tenancy for Landlord's Use be cancelled based on the tenant's suspicion of bad faith on the part of the owner. Therefore, in order to refute the tenant's application, I find that the landlord would be required to furnish some evidence to support the Notice. In fact, the landlord was submit this evidence or proof to both the Residential Tenancy Branch, and to the tenant, five days prior to the hearing. The evidence was needed to verify the following:

1. the unit was sold and that all conditions of the sale have been satisfied and

2. the landlord received written notice from the purchaser stating that the purchaser intends to reside in the rental unit and requesting that the landlord issue the tenant with a Two-Month Notice to End Tenancy on that basis.

In this instance, I find the landlord only offered verbal testimony to confirm that he has received the mandatory written notification from the purchaser. But this verbal testimony was disputed by the applicants.

With regard to the landlord's request to be allowed more time to submit missing evidence after the hearing, I find that it would not be possible to accept evidence from one of the participants after the hearing concluded. I find that Rule 4.1 of the Residential Tenancy Rules of Procedure states that if the respondent intends to dispute an Application for Dispute Resolution, then he or she must submit copies of all available documents or other evidence the respondent intends to rely upon at the proceeding. These must be received by the Residential Tenancy Branch and served on the applicant at least five (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure. The Rules also state that, if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

In this case, I find that no evidence of any kind was ever served by the landlord in support of the Notice and his verbal testimony. Given the above, I find it would violate the rules of procedure and thwart the principle of natural justice to permit one party to submit evidence after-the-fact, that was not properly served to the other party prior to the hearing.

Accordingly, I find that the landlord has not sufficiently met the burden of proof to validate the Two Month Notice to End Tenancy for Landlord's Use. Therefore, the Notice to End Tenancy for Landlord's Use dated March 7, 2011 must be cancelled.

Conclusion

I hereby order that the Two-Month Notice To End Tenancy for Landlord's Use dated March 7, 2011 is cancelled and of no force nor effect.

I further order that the tenant be reimbursed for the \$50.00 cost of this application and issue a monetary order in this amount in favour of the tenant.

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: March 2011.

Residential Tenancy Branch