



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was originally conducted via teleconference on July 24, 2012 and was attended by the male tenant and the landlord. In a written interim decision from that hearing I granted an adjournment for the matter of cancelling a notice to end tenancy and severed and dismissed the tenant's claim for monetary compensation with leave to reapply.

The hearing was reconvened on August 8, 2012 by teleconference and was attended by the male tenant, the landlord and a member of the landlord's family. The member of the landlord's family did not provide any testimony. The decision arising from this hearing (this decision) must be read in conjunction with the interim decision dated July 24, 2012.

During the hearing, the landlord verbally requested an order of possession should the tenants be unsuccessful in their Application.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Residential Tenancy Act (Act)*.

If the tenants are unsuccessful in their Application seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

While the tenants have submitted copies of several tenancy agreements confirming the tenants have resided in this rental unit since June 15, 2007, the most recent tenancy agreement submitted into evidence was signed by both parties on January 1, 2010 for a month to month tenancy beginning on January 1, 2010 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid in 2007.

The landlord who signed this agreement is deceased and the tenancy is currently being managed by the estate with the named respondent as the landlord. The respondent is the executrix of the estate.

The tenants have also submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 16, 2012 with an effective date of August 31, 2012 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or landlord's spouse.

The landlord testified that she has issued the notice to end tenancy due to her own personal financial circumstances that require her to rent out her current home and to move into the rental unit with the permission of the heirs rent free until such time as her financial circumstances have stabilized.

In support of this position, the landlord has submitted the following documentary evidence:

- A copy of a letter from the landlord's bookkeeper dated June 21, 2012 that states the bookkeeper advised the landlord she must take measures as soon as possible to improve her cash flow due to recent large and unsustainable business losses, heavily mortgaged properties, significant debt load and pending tax bill with the Canada Revenue Agency;
- A copy of an email from one of the heirs of the estate dated July 16, 2012 confirming that he has discussed the landlord's circumstances with the other heirs and they agree to allow the landlord to move into the rental unit for 6 months rent free to assist her in managing her financial situation. This email also includes instruction to the landlord to prepare the house to be in a more "saleable condition" during her occupancy; and
- A copy of a tenancy agreement between the landlord and third party tenants for the address that was previously used as the landlord's service address signed by the parties on July 16, 2012 for a 10 month fixed term tenancy beginning on September 1, 2012 for a monthly rent of \$2,500.00.

The tenants submit that while they do not dispute the landlord will move into the rental unit they question the landlord's good faith in issuing the 2 Month Notice to End Tenancy for the stated purpose.

The tenants have provided into evidence a substantial volume of evidence covering the duration of each of the tenancies and include a detailed account specifically related to the landlord's attempts to sell the rental property.

The tenants submit the rental unit was listed on the market for sale in April 2011 and both parties agree that they had entered into discussions for the tenants to purchase the rental unit since that time; once in the fall of 2011 and in May 2012.

The tenants submit that throughout this time period the landlord did make some cosmetic renovations to the house geared towards increasing the saleability of the house and property. The tenants also submit the landlord has gone through several realtors during this time period; the tenants believe this is because the landlord has not been fully honest with these realtors.

The tenants also submit the landlord has tried to get them to modify how they use the rental unit while the house has been on the market such as insisting the tenants put away their personal items and get a storage container so they can start packing to look as if they are prepared to move out of the unit in the event of a sale.

The landlord testified she had simply been informing the tenants of the feedback she had received from realtors after showings or open houses. The tenants have characterized it as harassment and submit the landlord in fact blames them for blocking potential sales of the property. The tenants contend the reason the home has not sold is the price is too high, based on its current condition.

The tenants submit they had met with one of the landlord's realtors on May 1, 2012 at which time the realtor asked specifically if there had been a mould problem and if it had been eradicated to which they replied that no mould remediation had been completed. The tenants submit that they felt, from his demeanour, that the realtor had been deceived by the landlord. The tenants believe this event triggered the landlord to issue the notice to end tenancy.

The parties agree that late in May 2012 they began to discuss the tenants purchasing the property again. The tenants submit that at this time the landlord's new realtor had agreed to reduce his commission if a deal could be worked out and that he also advised the tenants that the landlord was prepared to move into the rental unit in order to end the tenancy.

From the email evidence submitted by the tenants the landlord had offered the purchase to the tenants on May 22, 2012 and gave them until May 30, 2012 to come back with an unconditional agreement for purchase. The tenant testified that it felt like they were under a threat that if they didn't agree to the purchase the landlord would end the tenancy.

The landlord then provided the tenants with a letter dated May 26, 2012 (prior to the May 30, 2012 deadline for the offer to purchase) that provided the tenants with notice that the tenancy would end on July 31, 2012. In the letter the landlord provided the following reasons for ending the tenancy:

1. Personal reasons – it was essential for the landlord to move into the rental unit by August 1, 2012; and
2. While living there she will complete several repairs and renovations on the property as advised by her then realtor that would be necessary to sell the house after being on the market for over a year with no sale.

Both parties agree the landlord then on June 16, 2012 provided a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of August 31, 2012. They also agree the landlord first tried to issue a Notice based on the original letter of May 26, 2012 as the issue date with July 31, 2012 as the effective date.

The tenant testified that because of these recent events they no longer have any desire to purchase the home and are in fact willing to end the tenancy and they would be willing to vacate the property in 7 months.

The landlord testified the rental unit has been taken off the market and she has provided an email into evidence from her most recent realtor who has confirmed the unit is not currently listed with him or to the best of his knowledge is it listed on MLS or with any other realtor.

Analysis

The definition of landlord in Section 1 of the *Act* states that a landlord, in respect to a rental unit, includes the heirs, assigns, personal representatives and successors in title to a person who was the owner of the rental unit. For the purposes of the case before me I find the named respondent is the landlord, based on the testimony and evidence provided by the respondent.

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The section does not specify any time requirements for the duration of the landlord or family member's occupation. However Section 51, dealing with compensation to the tenant when issued a notice to end tenancy under Section 49, stipulates a tenant is entitled to additional compensation if either steps have not been taken to accomplish the stated purpose on the notice within a reasonable period or the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Policy Guideline 2 states that "good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage". The guideline goes on to say the "landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End Tenancy."

From the guideline, if the evidence shows that the landlord has another purpose or motive for using the rental unit, then the question whether the landlord has a dishonest use is raised and when it is raised I may consider motive when determining if the Notice should be upheld. The burden is on the landlord to establish that they do not have

another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

From the evidence before me, I find the landlord has indicated the reasons for ending the tenancy were twofold beginning in the letter she provided to the tenants dated May 26, 2012 and she maintained this position through her evidence.

I find the landlord has established that she is faced with a very unstable personal financial situation; has permission from all of the heirs to stay in the rental unit at no cost to her for 6 months and specifically to assist her with her financial situation; has rented her current home to a third party for a period of 10 months beginning the day after the effective date of the notice before me; and that the rental unit is no longer listed for sale.

I also accept from the testimony and evidence of both parties that the ultimate goal for the estate will be to sell the residential property to ensure the estate is settled for all parties. While there is no ability under the *Act* to end a tenancy purely for a landlord to sell the property, the *Act* does allow a landlord to move into the rental unit.

Once a landlord regains possession of the rental unit and begins to occupy the rental unit there is nothing in the *Act* that prevents the landlord from preparing the unit for sale at a future date. If however, the landlord fails to use the rental unit for the stated purpose and, for example, lists the rental property for sale without living in the rental unit herself, as noted above, tenants may be entitled to financial compensation.

Despite the tenant's evidence and testimony asserting the difficulty the tenants have had dealing with the landlord on all matters related to the sale of this property, I find the landlord has established that her intent is to move into the rental property – something the tenants do not disagree with and that even though part of her role as executrix of the estate will be to ready the property for sale this purpose does not negate the honesty of intent to move into the rental unit.

Conclusion

For the reasons noted above I dismiss the tenant's Application in its entirety.

In accordance with Section 55 of the *Act*, I find the landlord is entitled to an order of possession effective **August 31, 2012 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: August 10, 2012.

Residential Tenancy Branch