



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This was an application by a tenant to cancel a landlord use two month Notice to End the Tenancy dated June 29, 2013 with an effective date of August 30, 2013. Both parties attended the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order for possession or will the tenancy continue?

Background and Evidence

Service of the Application was admitted. The tenant admitted receiving the Notice on June 29, 2013.

The landlord testified that he sold the house containing the unit with a closing on July 30, 2013 and his realtor asked him to give the tenant the notice. He did not know very many other details including the identity of the purchasers as he relied upon his realtor. He did not produce a letter from the realtor, purchaser or a copy of the sales agreement. The landlord requested an Order for Possession.

A.S. the landlord's realtor testified that the purchaser specified on the offer to purchase the property that he required vacant possession. A.S. testified that he had not received any documents other than the offer regarding the purchaser's request. A.S. testified that he did not know why the purchaser wanted vacant possession and assumed he wished to live there. He did not know whether the purchaser would occupy the whole or part of the property.

The tenant testified that he requested more time to reside in the unit as it would be difficult for his children to find other accommodation in the same school area. He questioned why the purchaser would want vacant possession of his basement unit since the building contained an upper and two basement units.

Analysis

I am asked to decide whether the Notice should be aside and the tenancy continue, or whether the Notice is upheld and the tenancy end on the effective date of the Notice. The Notice is given under section 49(5) of the *Residential Tenancy Act*, which states:

- 49 (5) 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;

It is the landlord who has the burden of proof on the balance of probabilities to establish that all the conditions on which the sale depends have been satisfied, and that the purchaser requested the landlord, *in writing*, to give notice to end the tenancy because the purchaser an individual, or a close family member of the purchaser, *intends* in good faith *to occupy the rental unit*. This onus must be satisfied strictly where the landlord seeks to end a tenancy. Here the landlord had not produced any evidence written or otherwise as to why the purchaser required vacant possession. I therefore find that the Notice is not valid. Accordingly I have allowed the tenant's application and have cancelled the Notice to End the Tenancy.

Conclusion

I have cancelled the Notice to End the Tenancy dated June 29, 2013 with an effective date of August 30, 2013. I Order that the tenancy continue.

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: July 29, 2013

Residential Tenancy Branch