



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, OLC, LAT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and the tenancy agreement; and for authority to change the locks to the rental unit. The Agent for the Tenant stated that the application for an Order requiring the Landlord to comply with the *Act* relates to the validity of the Notice to End Tenancy.

The Tenant and the female Landlord were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were personally served to the male Landlord sometime in November of 2013. The female Landlord acknowledged that these documents were served to the male Landlord, who provided them to her. These documents were accepted as evidence.

The Landlord stated that documents the Landlord wishes to rely upon as evidence were submitted to the Residential Tenancy Branch and then posted on the door of the Tenant's rental unit. The Agent for the Landlord stated that she believes these documents were received by the Tenant. These documents were accepted as evidence.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside and should the Tenant be granted permission to change the locks to the rental unit?

Background and Evidence

The Agent for the Tenant and the Landlord agree that the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which runs from November 01, 2012 to May 01, 2014.

The Agent for the Tenant and the Landlord agree that on October 30, 2013 the Landlord posted a Two Month Notice to End Tenancy for Landlord's Use of Property on the

Tenant's door, which declares that the Landlord has sold the property and that the Tenant must vacate the rental unit by December 31, 2013.

The Witness for the Landlord stated that he is the realtor who sold the rental unit; that all the conditions of sale have been satisfied; and that the possession date for the property was December 28, 2013.

The Agent for the Tenant stated that the Tenant wants authority to change the locks because someone has threatened to move his property out of the rental unit if he does not vacate the rental unit; that she is not certain who made that threat; that there has been no attempt to move any of his property; and that she is not aware of any attempt to enter the rental unit without proper authority.

The Landlord stated that the Landlord has no intention of moving the Tenant's property if they do not have lawful possession of the rental unit.

Analysis

Section 49(5) of the *Act* authorizes a landlord to end a tenancy if a landlord enters into an agreement in good faith to sell the rental unit; all the conditions of sale have been satisfied; and the purchaser or a close family member of the purchaser intends to occupy the rental unit.

Section 49(2)(c) of the *Act* stipulates that a landlord may end a fixed term tenancy pursuant to section 49(5) of the *Act* on a date that is not earlier than the date specified as the end of the tenancy. As this is a fixed term tenancy and the fixed term does not expire until May 01, 2014, I find that the Landlord does not have the right to end the tenancy on December 31, 2013. As the Landlord does not have the right to end the tenancy on December 31, 2013 in accordance with section 49(5) of the *Act*, I grant the Tenant's application to set aside the Notice to End Tenancy that attempts to end the tenancy on December 31, 2013.

Although I do have the authority to amend the Two Month Notice to End Tenancy so that the Notice ends the tenancy on May 31, 2014, I decline to do so in these circumstances, as it is possible that this sale may collapse if the seller is unable to take possession of the rental unit prior to May 31, 2014, in which case the Landlord would no longer have the right to end this tenancy pursuant to section 49(5) of the *Act*.

The Landlord retains the right to serve the Tenant with another Notice to End Tenancy pursuant to section 49(5) of the *Act* that is effective on May 31, 2014. The new Notice to End Tenancy may be served to the Tenant immediately, providing the Landlord still has an agreement to sell the rental unit; the conditions of sale remain satisfied; and the purchaser or a close family member of the purchaser intends to occupy the rental unit.

The parties also retain the right to enter into a mutual agreement to end this tenancy, which must be in writing.

I find that the Tenant has submitted insufficient evidence to show that the Landlord has, or is likely to, enter the rental unit without proper authority. In reaching this conclusion I was heavily influenced by the testimony of the Landlord, who stated that the Landlord does not intend to move the Tenant's property unless they have a lawful right to do so, and by the Agent for the Tenant's inability to state who threatened to move the Tenant's property. I therefore dismiss the Tenant's application to change the locks to the rental unit.

Conclusion

The Notice to End Tenancy that is the subject of this dispute is set aside and the tenancy shall continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 08, 2014

Residential Tenancy Branch

