



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 a tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be upheld or cancelled?

Background and Evidence

The tenants have been residing in the rental unit since July 15, 2011 and have entered into a new tenancy agreement with the landlord every year thereafter. The most recent tenancy agreement entered into between the parties commenced September 1, 2013 for a fixed term set to expire August 31, 2014. The tenants are required to pay rent of \$650.00 on the 1st day of every month. The tenancy agreement provides that at the end of the fixed term the tenancy may continue on a month-to-month basis unless the parties enter into another fixed term.

On October 31, 2013 the tenants received a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) with a stated effective date of December 31, 2013. The reason for ending the tenancy as indicated on the Notice is 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 rental unit is one side of a duplex building that has not been stratified, meaning the landlord owns both units under a single title. The landlord explored the option of stratifying the property so that she could sell or continue to use the units independently. The existing building, with its two units, is currently legal; however, the landlord learned that in order to stratify the property significant upgrades would be required for the fire-wall that separates the two units. The landlord decided not to proceed with stratification and instead entered into an agreement to sell the entire property to the tenants occupying the other side of the duplex (the prospective purchasers).

I heard that the prospective purchasers have been unable to obtain financing to purchase the property so long as the fire-wall requires up-grading and the rental unit remains tenanted. So, the prospective purchasers have indicated to the landlord that they wish to have possession of both sides of the duplex so that they can either make the up-grades to the fire-wall or use the building as a single family dwelling.

As evidence for this proceeding the landlord provided copies of some of the pages of a sales agreement, although the page containing the identification of the parties involved in the purchase and sale; the address of the property being sold; and, the signatures was omitted from the evidence presented to me. The landlord also provided copies of correspondence and information related to the landlord's investigation into stratifying the property.

Analysis

Where a landlord gives a 2 Month Notice under section 49 of the Act, as in this case, the effective date 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, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

[my emphasis added]

Since the parties entered into a fixed term agreement set to expire August 31, 2014 the effective date on a 2 Month Notice cannot be any earlier than August 31, 2014.

Section 53 of the Act provides that if an effective date stated on a Notice to End Tenancy is earlier than the requirements outlined above, the effective date will be deemed to be that which is compliant. Therefore, I have proceeded to consider whether the 2 Month Notice should be upheld, with a corrected effective date of August 31, 2014, or cancelled as requested by the tenants.

Where a Notice to End Tenancy comes under dispute the landlord bears the burden to prove the criteria for ending the tenancy, as set out by the Act, have been met and that the tenancy should end for the reason indicated on the Notice. In this case, the landlord has indicated on the Notice that the rental unit is the subject of a sales agreement in which all conditions of sale have been met; and, that the purchasers have requested the landlord give the 2 Month Notice to the tenants because the purchasers, or a close family member, intend to reside in the rental unit. However, the landlord did not provide a copy of a fully executed unconditional sales agreement for the subject property as evidence or a copy of the letter she received from the purchasers. Therefore, I find the landlord has failed to meet her burden of proof that all of the criteria for issuing this Notice had been met when she issued the Notice.

In light of the above, I cancel the 2 Month Notice served upon the tenants with the effect that this tenancy continues.

As the tenants have been successful in this proceeding, I award the filing fee to the tenants. The tenants are authorized to deduct 50.00 from a future month's rent in order to satisfy this award. Alternatively, the landlord may pay \$500.00 to the tenant's directly.

Conclusion

The 2 Month Notice has been cancelled and the tenancy continues. The tenants have been awarded recovery of the filing fee which they may satisfy by deducting \$50.00 from rent owed to the landlord.

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: January 24, 2014

Residential Tenancy Branch

