



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NCD Developments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") and for recovery of the filing fee paid for this application.

The tenants and each of the landlord's representatives attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-It must be noted that when this tenancy began, the landlord was NCD; however, landlord XL issued the Notice to the tenants as a result of the sale of the residential property. Therefore the matter of which landlord possessed ownership at the time the Notice was issued was explored.

The landlord submitted documentary evidence which showed that the sale completion date was June 27, 2014, and the adjustment and possession date was June 30, 2014. The Notice was issued on June 28, 2014.

The testimony by the landlord was that as of June 27, 2014, landlord XL possessed ownership of the subject residential property, as the documents showed that the sale of the home had been completed as of that date.

In the absence of any proof to the contrary by the tenants, it was my finding that the landlord XL was the actual landlord on the date the Notice was issued and the hearing proceeded on that basis.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence showed that this tenancy began on February 1, 2014 and monthly rent is \$1900.

The disputed evidence was whether or not the tenancy was for a fixed term or on a month to month basis.

The subject of this dispute is the *2 Month Notice to End Tenancy for Landlord's Use of Property* issued on June 28, 2014, by leaving the Notice with a family member residing in the rental unit, according to the landlord's agent and real estate agent, JY, with an effective end of tenancy date listed as September 1, 2014. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse.

The Notice informed the tenants that they had 15 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice; otherwise the tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice. The tenant confirmed receipt of the Notice and filed their application within the 15 days allowed.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified as to why the tenants had been served with the 2 Month Notice to End Tenancy for Landlord's Use of Property.

JY submitted that the current owner, XL, purchased the property, a single family dwelling, so that she and her family, including a spouse and three children, could move into the home as they have relocated to this country. JY stated that XL understood that the home was being rented, but that the tenants were there on a month to month basis and therefore the landlord would be able to gain possession upon a proper 2 Month Notice after purchase. JY submitted that the landlord XL and her family were currently in a short term rental so that they could find a suitable home to purchase and that he would have never shown the landlord this property if the subject tenancy was for a fixed term. It must be noted that if the tenancy was for a fixed term, the earliest the Notice could take effect would be the end of the fixed term.

JY requested an order of possession for the rental unit in the event the Notice was determined to be valid.

Tenants' response-

Tenant AO contended that the tenants and the original landlord, NCD, entered into a 1 year fixed term agreement, which ran from February 1, 2014, until the end of January 2015, and as proof, the tenant pointed to the term in the written tenancy agreement provided into evidence as well as copies of the 12 post-dated rent cheques issued to the landlord. The tenant pointed out that the written tenancy agreement was marked that the tenancy would continue on a month to month basis at the end of the fixed term.

The tenant submitted that he would never have agreed to rent a home for a short term, due to the hardship of moving a family, if he thought the tenancy was a month to month basis. The tenant submitted further that the original landlord misled the tenants into believing the tenancy was for 1 year, fixed term, that their verbal agreement was such, and that he, RD, never informed the tenants that the home was for sale. The tenant submitted further that the original landlord used the tenants to pay the mortgage while they were selling the property.

Original landlord's submissions-

RD, who represented the original landlord, stated that the written tenancy agreement shows that the tenancy was on a month-to-month basis as that was the term marked on the contract.

Analysis

When considering the parties' disputed testimony as to whether this tenancy was for a fixed term or on a month-to-month basis, I relied on the written tenancy agreement, signed by both parties. The written tenancy agreement is on the RTB standard form, and in the space for "length of tenancy," the box next to "on a month-to-month basis" is marked. The space designated for a fixed term, and giving the dates for the fixed term is not marked and is blank. Although there is later a box marked next to the phrase the tenancy may continue on a month-to-month basis or another fixed term, there was no fixed term designated to correspond to this box.

I therefore determined that the tenancy was on a month-to-month basis, as a fixed term was not clearly defined and on the face of the signed document, the tenancy was marked as a month-to-month tenancy.

As to the Notice, in the circumstances before me, I find that the landlord has submitted sufficient evidence that she intends to occupy the residential property and home for their own use as I accept they bought the home to be able to move in.

I therefore find that, upon a balance of probabilities, the landlord has met her burden of proving the rental unit will be used for the stated purpose listed on the Notice.

As I find the landlord submitted sufficient evidence to establish that she intends to use the rental unit for the stated purpose listed on the Notice, I therefore **dismiss** the tenants'

application to cancel the Notice, without leave to reapply. As I have dismissed the tenants' application, I decline to award them recovery of their filing fee.

The landlord and the tenants are hereby advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The landlord and the tenant are also advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenant the equivalent of two months' rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

Conclusion

The tenants' application is dismissed.

As I have dismissed the tenants' application, I grant the landlord's request for an Order of Possession, pursuant to section 55(1) of the *Act*, for the effective date listed on the Notice, or September 1, 2014, at 1:00 p.m.

The Order of Possession is enclosed in the landlord's Decision to serve upon the tenants. This order is a legally binding, final order, and may be filed in the Supreme Court of British Columbia should the tenants fail to vacate the rental unit pursuant to the terms of the order. The tenants are advised that costs of such enforcement are recoverable from the tenants.

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 11, 2014

Residential Tenancy Branch

