



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, OLC, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a two month Notice to end tenancy for landlord's use of the property, an Order the landlord comply with the Act and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Eight pages of tenant evidence supplied to the Residential Tenancy Branch (RTB) on July 15, 2015 were not given to the landlord. That evidence was set aside. The balance of the evidence was considered, combined with the testimony of the parties.

Issue(s) to be Decided

Should the two month Notice to end tenancy for landlord's use of the property issued on May 28, 2015 be cancelled?

Must the landlord be Ordered to comply with the Act?

Background and Evidence

The tenancy commenced on September 1, 2012, rent is \$2,300.00 per month, due on the first day of each month. A copy of the signed tenancy agreement was supplied as evidence.

There was no dispute that on May 28, 2015 the tenants received a two month Notice ending tenancy for landlord's use of the property. The Notice was issued on May 28, 2015.

The male tenant was given the Notice, which sat for several days before the female tenant looked at the document closely. The female tenant had not looked at the Notice as they had been expecting a sale of the property might be imminent. The tenant confirmed that they understood the home was for sale and the Notice was intended to require an end of tenancy due to the sale of the home. However, when the tenant looked at page two of the Notice a reason had not been selected by the landlord.

The landlord provided a copy of a *Contract of Purchase and Sale* dated May 15, 2015 as evidence. The sale was subject to the buyer removing conditions on or before May 27, 2015. Page two of the *Contract of Purchase and Sale* document included clause 5 which provides:

POSSESSION: The Buyer will have vacant possession of the Property at 10:00 a.m. on August 2, yr. 2015 (Possession Date) OR, subject to the following existing tenancies, if any: Vacant Possession.

Clause 4 of the *Contract of Purchase and Sale* document refers buyers and sellers to the Residential Tenancy Act where tenants are involved in a sale.

On May 27, 2015 the purchasers signed a *Removal of "Subject to Clause" and Appointment of Conveyancer* document. This document confirmed removal of the subjects to sale. The copy of this document supplied as evidence did not include the landlord's (sellers) signature.

There was no dispute that on June 1, 2015 the tenants sent the landlord a letter via email; a copy of the letter was submitted as evidence. The tenants provided the landlord with information on section 49(5) of the Act and reminded the landlord that the purchaser was required to make a written request asking the seller to issue a notice based on the purchaser's intention. The tenants asked the landlord if he could issue a fully completed Notice, that he confirm all conditions of the sale had been satisfied and that he supply a copy of the purchaser's written request that the Notice be issued.

On June 2, 2015 the landlord replied to the tenants confirming he had received their letter that morning and that he had not checked the box on page two of the Notice ending tenancy. The landlord said the possession date had to remain as August 1st and that notice of the purchasers' intention for the property was given verbally. The landlord told the tenants that the dates did not need to be corrected but he would check the appropriate box on the Notice.

The landlord did not respond to the June 1, 2015 request made for written confirmation by the purchaser. The landlord said he has had only a verbal request to issue the Notice ending tenancy, given to him by the realtor. The landlord said the tenants did not respond to his June 2, 2015 email so he thought the tenants' concerns no longer existed.

The tenant raised the landlords' good faith intention as in July 2015 the landlord said he had checked the box indicating the reason for the Notice. This was in direct contradiction to the landlords' email sent June 2, 2015. The tenant expressed some reservations related to the sale, as the landlord had not signed the *Removal of "Subject to Clause" and Appointment of Conveyancer* document. The tenant said that rental properties are not easily located in the area and that the purchaser may not be planning on occupying the home. The tenants are suspicious of the purchasers' intent.

The landlord asked if he could now obtain a letter from the purchaser, setting out their intention for the Notice and possession. The tenant said that at this point she suspects a purchaser would write any letter so that the sale could be concluded and the Notice upheld.

On July 21, 2015 legal counsel for the landlord sent the tenants a letter in an attempt to settle the matter. The letter indicated that the

"buyers are to take complete possession of the vacate premises on August 2, 2015."

(Reproduced as written)

The letter states that the buyers and seller expect the property to “vacate” at the time of completion date.

The tenant referred to a guide document when making submissions. I explained that my decision is based on the legislation. I am also guided by Residential Tenancy Branch policy guidelines.

Analysis

In relation to the tenants request that another Notice be issued to include a reason I have considered section 68 of the Act, which provides:

Director's orders: notice to end tenancy

68 (1) *If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*
(a) *the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*
(b) *in the circumstances, it is reasonable to amend the notice.*

(2) *Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*
(a) *order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*
(b) *set aside or amend a notice given under this Act that does not comply with the Act.*

There was no dispute that the tenants had not misunderstood the intent of the Notice. The property had been for sale and the tenants were aware they may have to vacate the rental property as the result of a sale. They did not examine the Notice for several days after receipt as they were confident it was related to a sale of the property. Therefore, I find, in this circumstance it is reasonable to amend the Notice and that the reason on the Notice is:

“All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.”

RTB policy (#2) provides information on good faith in relation to ending a tenancy. If the good faith intention of the landlord is called into question the landlord has the burden of proving they intend to meet the conditions of the reason on the Notice ending tenancy. The landlord must demonstrate that they do not have another purpose that negates an honest intent or that an ulterior motive exists for ending the tenancy.

The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through an agreement for sale and the purchaser’s written request for the seller to issue a Notice to End Tenancy.

An agreement of sale has been supplied as evidence and despite the tenants’ lack of

confidence in the landlord's good faith intention; I can find no reason to suggest that this contract is not valid.

I have considered section 49(5) of the Act, which provides:

(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;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

In relation to a written request by the purchaser requesting the seller issue a Notice to end tenancy; despite the tenant's request for this information made on June 1, 2015, the landlord failed to obtain written confirmation of the intention of the purchaser. The landlord has instead relied on a conversation he had with his realtor, that vacant possession was needed. Even with this impending hearing the landlord did not take steps to comply with section 49(5) of the Act by supplying evidence confirming the purchaser had made a written request for a Notice ending tenancy. The landlord said he does not have such a written request.

I have considered clause 5 of the *Contract of Purchase and Sale* for evidence that possession was requested so that the purchaser or close family member could occupy the rental unit and find none. Vacant possession, as indicated in this clause of the contract could be taken to mean a variety of intentions by the purchaser.

It may seem reasonable that a purchaser would intend to occupy the property. However, I find the lack of a written request made by the purchaser that a notice to end tenancy be issued for the reasons set out in section 49(5) of the Act results in a breach of the Act. I find the absence of written confirmation unusual, particularly when the tenants made a request for this information on June 1, 2015.

The landlord was at liberty to supply the required written request for Notice and the reason for the Notice end the tenancy, but did not respond to that request. The landlord had an obligation to have this written confirmation at the time the Notice was issued but proceeded on what he submits was a verbal request made by the purchaser.

Despite clause 4 of the *Contract of Purchase and Sale* it appears that neither the seller nor purchaser were aware of their obligations under section 49 of the Act.

Therefore, in the absence of evidence of compliance with section 49(5) of the Act, I find that the good faith intention of the landlord is in question and that the two month Notice ending tenancy for landlord's use issued on May 28, 2015 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

As the application has merit I find the tenants are entitled to deduct \$50.00 filing fee cost from the next month's rent due.

Conclusion

The two month Notice ending tenancy for landlord's use issued on May 28, 2015 is cancelled.

The tenants are entitled to deduct the \$50.00 filing fee from the next month's' rent.

This decision is final and binding and 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, 2015

Residential Tenancy Branch

