



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FF

Introduction

The tenant has applied to cancel a two month Notice to end tenancy for landlord's use of the property issued on December 14, 2015 and to recover the filing fee costs from the landlord.

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 evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the two month Notice ending tenancy for landlord's use of the property issued on December 14, 2015 be cancelled?

Background and Evidence

This tenancy commenced in June 1980. The tenant rents a cottage and for the past 12 years completed some caretaker duties, such as lawn cutting, in lieu of making rent payments. The tenant confirmed that when he paid rent during a previous tenancy on the property the rent was due on the first day of each month.

On December 14, 2015 the tenant received a two month Notice to end tenancy for landlord's use of property. The Notice has an effective date of February 29, 2016. The single reason on the Notice is:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the

purchaser or a close family member intends in good faith to occupy the rental unit.”

A copy of the Contract of Purchase and Sale Addendum signed by the purchasers on December 14, 2015 was provided as evidence. The conditions of sale were removed and the sale was confirmed as binding by the purchasers. The possession date was changed from February 5, 2016 to March 4, 2016.

A copy of a December 14, 2015 email from the purchasers' to the sellers realtor stated that the purchasers would be living in the home permanently, would not require a caretaker and that they wanted vacant possession of the rental unit.

The tenant said that he had been told by previous owners and the current owner that he could remain as a tenant on the property. The tenant does not wish to vacate and believes the purchasers should agree to rent the cottage to him. The landlord's agent confirmed that the purchasers looked into obtaining liability insurance for the cottage, but were denied coverage. The tenant said he would be willing to sign a waiver of any right to sue the purchasers and that he would use only a portion of the property. The landlords' agent said that a waiver would not be reliable and that the purchasers do not want to have a renter on the property.

The tenant said that he should be receiving severance from the landlord; although the tenant confirmed that his rent was paid through the provision of work.

Written submissions from the property owner confirm that they would not charge rent in exchange for the provision of caretaker duties on the property. The current owners did not charge rent and accepted grounds keeping, contact with vendors or contractors and, notice of any issues on the property in lieu of rent owed. The owner confirmed that the purchasers have said they do not want a caretaker and that they have requested vacant possession of the cottage.

The tenant stated that the property was to be sold with caretaker services. The listing information provided by the landlord indicated that the property had a caretaker's cabin. The agent said that given the state of the cabin it is likely the new owners will use it for storage or have it torn down.

The tenant is objecting at having to leave a property where he has lived for an extended period of time with the promise of a life-long tenancy by a previous and the current owner.

Analysis

From the evidence before me I find that this is a tenant – landlord relationship. The owner of the property has permitted occupation of the rental unit by the tenant and accepted rent by way of services provided, such as grounds keeping. No money exchanged hands. Therefore, I find on the balance of probabilities that there was a

meeting of the minds that a tenant-landlord relationship was supported by completion of basic caretaker duties by the tenant.

The tenant does not understand why the purchasers will not engage in a discussion about continuing his presence on the property. The tenant has offered to sign a liability waiver and would be willing to limit his access to other areas of the property.

Section 49(5) of the Act 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.

From the evidence before me I find that the landlord has entered into an agreement to sell the property; this is supported by the copy of the purchase documents submitted as evidence. The email sent by the purchaser to their realtor on December 14, 2015 provides a clear intent of the purchaser to live in the home and that vacant possession of the property was requested. On the day this request was made by the purchaser, the landlord issued the Notice ending tenancy.

From the evidence before me I find that the conditions of sale have been removed and possession date by the purchasers will be March 4, 2016.

I find that the landlord has acted in accordance with the Act by selling the property and responding to the purchasers request for vacant possession. The contract of purchase and sale supports this finding.

Therefore, I find that the two month Notice to end tenancy for landlord's use of the property is of full force and effect and that the tenant's application is dismissed.

Section 55(1) of the Act provides:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Therefore, as the tenants' application is dismissed I must issue the landlord an Order of possession.

The landlord has been granted an Order of possession that is effective **February 28, 2016 at 1:00 p.m.** This Order must be served on the tenant no less than two days before February 29, 2016, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The application is dismissed.

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: February 10, 2016

Residential Tenancy Branch

