



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnl, ff

Introduction:

The tenant requests an order to cancel a 2 Month Notice to End Tenancy, given for landlord use of property.

The tenant attended the hearing. The son of the owner of property, as well as an articulated student also attended the hearing (and for simplicity sake will be referred to as the "landlord"). A preliminary issue was raised as to whether the person named as respondent and landlord in the application should be amended. The tenant did not consent to any such change, and I therefore declined to amend this name in the style of cause. Although the named respondent is not an owner of the premises, I note that the person named signed the 2 Month Notice to End Tenancy on behalf of the landlord, and that the landlord's representatives at the hearing confirmed that the person named was in fact an agent of the landlord.

Issue(s) to be decided:

The 2 Month Notice to End Tenancy states that all conditions for the 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 tenant questions whether all these provisions are met.

Background and Evidence

This tenancy began in summer, 1987. Monthly rent is now \$1,150.00, payable on the first day of each month. On January 30, 2016, the tenant received a 2 Month Notice to End Tenancy, given for landlord use of property.

By way of affidavit, which was affirmed to be true at the hearing, the owner's son provided the following evidence:

1. His parents owned the subject premises since 1960;
2. His father died, and his mother is elderly;
3. His mother no longer wished to be a landlord, and it was decided that the property would be sold;
4. A Contract of Purchase and Sale was entered into on December 18, 2015;

5. The Purchaser provided a written notice requesting vacant possession because the Purchaser, or a close family member of the Purchaser, intended in good faith to occupy the rental unit.

The tenant raises the following concerns:

1. The signature of the purchaser on the Contract of Purchase and Sale does not match the signature on the Buyers Notice to Seller for Vacant Possession;
2. There are two old houses on the subject premises and both have received similar notices, to the effect that the purchaser or a close family member intends to occupy the premises;
3. The house is very old, and it is unlikely a purchaser would live in it.

Analysis:

Section 49(5) of the Residential tenancy Act permits a landlord to end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy on the ground that 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.

Based upon the testimony and documentary evidence of the landlord, I am satisfied that the owner of the subject premises entered into a valid Contract of Purchase and Sale to sell such premises. I note that each of the parties to the agreement have disclosed an agency relationship with a licensed real estate agent, which suggests an arm's length transaction. I note that the Purchase's means of execution was through electronic signature and initial through the "DocuSign" process, an electronic means of execution that is widely used and accepted in real estate sales. The Contract terms required the seller to provide vacant possession to the purchaser, and specifically excluded any items belonging to tenants. I accept that this Contract was entered into in good faith by the landlord/owner.

The Contract specifically required that the seller give legal notice to the tenant to vacate the premises, provided that the seller received the appropriate written request from the buyer to give such notice in accordance with the requirements of section 49 of the Residential Tenancy Act. I accept that through their realtor, the landlord received such a formal written notice. This notice referenced the subject property and the subject Contract of Purchase and Sale, and it requested that the landlord give the tenant of the premises a notice to end the tenancy, as the purchaser, or spouse children or parents intended in good faith to occupy the premises being purchased. Although the electronic signature on that document is different than the electronic signature on the Contract, that fact in and of itself does reveal that a purchaser did not have a good faith intention to occupy the premises. I note for example, that the Contract references a "Nominee" as potential buyer, suggesting that an unnamed purchaser may be involved in the purchase. It is possible that the purchaser gave the notice to the seller without a good faith intention, but the mere fact of a different electronic signature fails to demonstrate

any probability of same. More to the point, I accept that the seller had no knowledge of any bad faith by the purchaser, and the evidence before me does not indicate the seller was willfully blind or should have known that there was a bad faith intention of the purchaser. There is no evidence before me that the landlord was motivated by dishonest or undisclosed purposes in ending this tenancy. The landlord's intention was to sell the premises, and provide to possession to the purchaser as requested by the purchaser. I accept that the landlord has established a genuine belief that the purchaser or a family member truly intends to occupy the premises.

As to the tenant's suggestion that no purchaser would want to live in such an old house, the very fact the tenant seeks to remain in possession and occupy the house herself defeats such an argument. If the tenant is willing to pay rent and reside in the home, it follows that another person would be willing to reside there as well.

Based upon all the above, I find that the 2 Month Notice to End Tenancy is effective to end the tenancy April 1, 2016. The tenant's application for an Order to cancel the notice is dismissed, as is the tenant's application to recover her filing fee.

Section 55 (1) of the Residential Tenancy Act provides that 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 the landlord's notice is proper as to form and content, and the tenant's application to cancel the Notice is dismissed. Those conditions are met, and accordingly, an Order of Possession is granted to the landlord, effective April 1, 2016.

Conclusion

The tenant's application is dismissed. The landlord is granted an Order of Possession, effective April 1, 2016.

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: March 22, 2016

Residential Tenancy Branch