



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with a tenant's request 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.

Preliminary and Procedural Matters

This dispute concerns a *2 Month Notice to End Tenancy for Landlord's Use of Property* issued on May 16, 2016 by the landlord of the property at that time. The property was transferred to the current owner on May 25, 2016. Accordingly, I have referred to the landlord who issued the 2 Month Notice as "the former landlord" for the remainder of this decision.

The tenant had named two individuals as respondents in this case: one being the former landlord who served the tenant with the subject 2 Month Notice; and, the second individual being the purported current landlord. I heard from the agent representing the current owner that the current owner is actually a limited corporation and the individual named by the tenant is the sole shareholder of the limited corporation. The Statement of Adjustments included in the evidence indicates that the purchaser of the property is a limited corporation. None of the parties requested that I amend the application to name the limited corporation as a party to this dispute. Since the definition of landlord includes an agent for the owner, I found it reasonable that the individual named by the tenant is an agent for the current owner which would meet the definition of landlord. Accordingly, I make no amendment to the style of cause. For the remainder of this decision, I refer to the corporate owner as "the current owner" and the shareholder as being "the current landlord".

The tenant had submitted a USB memory stick to the Residential Tenancy Branch as evidence on May 25, 2016; however, I determined that the USB stick was not served upon either respondent in a manner that complies with the Rules of Procedure. The Rules of Procedure provide that an applicant's evidence must be served upon the other party at least 14 days before the hearing. The tenant served only one of the two named respondents, the former landlord, and it was delivered to him the day before this hearing. Also, a party serving digital evidence must ensure the other party is able to access the digital evidence. The tenant did not confirm that the former landlord was able to access the digital evidence. Since the evidence was not served upon both named respondents, served very late, and without confirmation that the recipient was able to access the digital evidence, I excluded the tenant's digital evidence from further consideration. The tenant was informed that he would be permitted to provide his evidence orally during the hearing.

During the hearing, I ordered the former landlord to provide me with a copy of the contract of purchase and sale for the subject property.

Issue(s) to be Decided

Should the *2 Month Notice to End Tenancy for Landlord's Use of Property* dated May 16, 2016 be upheld or cancelled?

Background and Evidence

The tenancy commenced December 7, 2015 on a month to month basis. The tenant is required to pay rent of \$850.00 on the first day of every month. The subject property was put up for sale and on April 29, 2016 the conditions were removed from the offer to purchase. The property was transferred to the current owner on May 25, 2016. At the time of sale the property had one rental unit contained in the building but there was potential to have three living units. The tenant in this case resides in the rental unit in existence at the time of sale. Since the sale, a second rental unit has been created and the upper unit remains unconverted to living accommodation at this time.

On May 15, 2016 the former owner received written notice that the purchaser intended in good faith to occupy the residential premises and requested that the former landlord give the tenant notice to end the tenancy by July 31, 2016. The written request indicates the request was being made in accordance with section 49 of the Act.

On May 16, 2016 the former landlord personally served the tenant with the subject *2 Month Notice to End Tenancy for Landlord's Use of Property* (the 2 Month Notice). The

2 Month Notice has a stated effective date of July 31, 2016 and indicates the reason for ending the tenancy is as follows:

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

The tenant filed to dispute the 2 Month Notice within the time limit for doing so.

Upon review of the written request given to the former owner on May 15, 2016, I am satisfied the former landlord had a basis under the Act to serve the tenant with the 2 Month Notice that is the subject of this dispute. Accordingly, the relevant submissions that follow pertain to the current landlord's intentions with respect to the rental unit.

The agent representing the current landlord submitted the following:

- The financing obtained for purchase of the property is a residential mortgage requiring the property to be owner-occupied.
- The financing was obtained based upon the current landlord occupying the residential property in one living unit while having two rental units.
- To meet the financing requirements the current owner must reside on the property and perform caretaking duties.
- Since the property was transferred to the current owner renovations were completed on the second rental unit and the second rental unit has been rented to other individuals.
- The current owner intends to occupy the tenant's rental unit and after re-development of the upper level of the building the landlord's brother may occupy the upper level.

The tenant submitted that:

- When the current landlord was the prospective buyer he asked the tenant if he wanted to continue to reside in the rental unit to which the tenant replied that he did.
- The house inspector who attended the property when the sale was pending asked the tenant how much he was paying in rent and when the tenant told him \$850.00 the house inspector indicated that the amount was low.
- The current landlord told the tenant that he did not have anybody moving in to the rental unit but that the tenant could continue to reside in the rental unit if his rent was increased to \$1,200.00 per month. The tenant stated that he cannot afford \$1,200.00 per month.
- The current landlord told the tenant that if he did not get more rent from the rental unit that the landlord would have to move in.
- The tenant contacted the Realtor involved in the sale of the property and the Realtor told the tenant that his understanding was that the rental unit would be occupied by the current landlord's brother and that the second rental unit was rented to other people.
- The tenant questioned the current landlord's intention to reside in the rental unit since the landlord works in another town.

In response, the former landlord stated that he did not have any conversations with the current landlord and that all communication between him and the purchaser was done through their respective Realtors. As such, the former landlord was not privy to any conversations the tenant may have had with the house inspector, the Realtor, or the current landlord.

The agent appearing on the behalf of the current landlord also acknowledged that she was not privy to any of the conversations the tenant may have had with the house inspector, Realtor, or current landlord. The agent confirmed that the current landlord works in another town but submitted that the current landlord currently resides in the same town as the rental unit and commutes to the other town for work, although he may occasionally stay in the other town with his girlfriend. The agent stated that the current landlord presently rents his living accommodation and will end his tenancy to move into the rental unit.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason indicated on the Notice.

Section 49 of the Act provides that a tenancy may be ended for landlord's use of the property. There are several circumstances provided under section 49 of the Act for ending a tenancy for landlord's use. Below, I have described the circumstances relevant to this dispute.

Where the owner of a property, or a close family member of the owner, intends in good faith to occupy the rental unit, the tenancy may be ended. Close family member is defined as being the owner's spouse, the owner's parent or child, or the parent or child of the owner's spouse. A sibling of the owner does not meet the definition of close family member.

Section 49 Act recognizes that the owner of a property may be a "family corporation" and defines a family corporation to include a corporation where all of the voting shares are owned by one individual, such as in this case. In such cases, the tenancy may be ended for where the person owning the voting shares of the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49 also recognizes that where ownership of a property is about to be transferred because it has been sold, that the tenant may be given notice to end tenancy for landlord's use where the purchaser, including the shareholder of a family corporation, or a close family member of that individual, intends in good faith to occupy the rental unit. Where a Notice to End Tenancy is issued in these circumstances, I find it appropriate that in disputing the Notice the tenant name the landlord who issued the Notice, the purchaser who requested the Notice to be served upon the tenant, or both as may be appropriate. In this case, the tenant did name both the landlord who issued the 2 Month Notice and the shareholder of the family corporation who had requested issuance of the 2 Month Notice.

As stated previously in this decision, I am satisfied that the landlord who issued the 2 Month Notice had a basis to do so on May 16, 2016 since the conditions of the sale had been removed and the shareholder of the family corporation purchasing the property had requested the 2 Month Notice be served, in writing. Accordingly, the focus of the remainder of this analysis is on the good faith intention of the shareholder of the purchaser, now the owner of the property, to occupy the rental unit.

In order to end the tenancy, the shareholder (the current landlord) must have a good faith intention to occupy the rental unit. Policy statements regarding the good faith requirement are provided in Residential Tenancy Policy Guideline 2: *Good Faith Requirement when Ending a Tenancy*. The policy guideline provides, in part:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. 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:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In this case, I find the tenant has called into question the current landlord's good faith intention in alleging the landlord seeks to increase the rent by a considerable amount, based on discussions with the landlord, or having the landlord's brother occupy the rental unit, based upon information received from the Realtor. The agent representing the current landlord refuted the tenant's allegation that the landlord's brother intends to occupy the rental unit and I do not consider the information from the third party Realtor to be overly reliable. However, I find the tenant's claims regarding the landlord's motivation to increase the rent were not effectively rebutted. I make this finding considering:

- The tenant claimed during the hearing that the landlord has offered to continue a tenancy with the tenant in exchange for higher rent.

- The tenant had also pointed to the landlord's motive to increase the rent by way of the "Details of Dispute" provided on the tenant's application.
- The current landlord did not appear at the hearing or provide any written submissions to refute the tenant's allegations regarding conversations they had.
- The landlord did not provide other documentation, such as a notice to end his own tenancy, in support of his intention to move out of his current living accommodation and in to the rental unit.
- There was no evidence that it is the rental unit that the landlord is required to occupy the rental unit as opposed to the other living units in the property in order to satisfy the mortgage requirements.
- The landlord had an opportunity to occupy a living unit at the residential property, the second rental unit created shortly after the property was transferred, but chose to rent that unit to other individuals and is trying to end the subject tenancy.

Considering all of the above, I find the tenant successfully called the landlord's good faith intention into question and the landlord did not sufficiently establish that it is a good faith intention, as opposed to an ulterior motive to increase rent, that is behind the issuance of the subject 2 Month Notice. Therefore, I grant the tenant's request and I cancel the 2 month Notice issued on May 16, 2016 with the effect that the tenancy continues at this time.

Conclusion

The tenant's application has been granted and the 2 Month Notice issued on May 16, 2016 is cancelled.

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: June 28, 2016

Residential Tenancy Branch