



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by one of the tenants and the landlord.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Act*.

Should the tenants be unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on August 19, 2014 for a 2 year and 1 day fixed term tenancy beginning on September 15, 2014 for a monthly rent of \$1,300.00 due on the 1st of each month. The agreement stipulates that the tenancy would convert to a month to month tenancy at the end of the fixed term;

- A copy of a “Buyers Notice to Seller for Vacant Possession of a Tenant Occupied Property” signed and dated June 29, 2016 by the purchaser requesting the landlord (seller) asking the landlord to ensure the tenant vacates the property by September 30, 2016; and
- A copy of a Proof of Service – Notice to End Tenancy document that records the landlord served the tenant with 2 Month Notice on July 1, 2016 personally to an adult who apparently resides with the tenant and that this service was witnessed by a third party.

The tenants submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 30, 2016 with an effective vacancy date of September 15, 2016 citing that 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.

The tenant submitted that that the notice should be cancelled or the effective date extended because she cannot find new accommodation. She states that none is available in her area. She also states that the landlord had promised a long term tenancy and that when they agreed to the 2 year fixed term the landlord promised they would renew the agreement on a year by year basis.

The tenant provided no testimony that she disbelieved the landlord had sold the property or that the purchaser intended to move into the rental unit. The tenant has provided no evidence of any documented promises made by the landlord or how those promises would override or take precedent over the landlord's right to sell the property or the purchaser's desire to move into the rental unit.

Analysis

Section 49(5) of the *Act* allows a landlord to end a tenancy 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 if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit.

As the tenant has provided no evidence at all that would disallow the landlord to sell the residential property; to end the tenancy for the stated purpose or questioning the good faith of the purchaser's intent to move into the rental unit and the landlord has provided undisputed evidence of the purchasers request for vacant possession, I find the 2 Month Notice to End Tenancy issued by the landlord on June 30, 2016 is valid and enforceable.

Section 49(2) stipulates that a landlord may end a tenancy for a purpose referred to in subsection Section 49 by giving notice to end the tenancy effective on a date that must

be not earlier than 2 months after the date **the tenant receives the notice** and the day before the day in the month, that rent is payable under the tenancy agreement.
[emphasis added]

While I advised the parties in the hearing that if the Notice was valid and enforceable the effective date would be September 15, 2016 as noted in the Notice upon further consideration of the landlord's written submissions I find the effective date must be changed.

I make this finding because the landlord's Proof of Service – Notice to End Tenancy document confirms that the landlord served the Notice to the tenants on July 1, 2016. The tenancy agreement confirms that rent is due on the 1st of each month.

In order to be compliant with the requirements of Section 49(2) the effective date of a Notice issued under Section 49 must not be earlier than 2 months after the tenant receives the notice and the before the day in the month that rent is payable.

As such a notice received by the tenant in July cannot be effective until at least two full calendar months have transpired and the day before rent is due. As rent is due on the 1st of each month I find the earliest the tenancy can end based on this Notice is September 30, 2016.

Section 53 of the Act allows 53 that if a landlord gives notice to end a tenancy effective on a date that does not comply with the required provisions, such as the effective date stated in the notice being earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. As such, Section 53 allows the effective date to be changed to the date that I have determined is the earliest possible date that complies with Section 49.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 2 Month Notice to End Tenancy for Landlord's Use issued by the landlord on June 30, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is found to be enforceable the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety without leave to reapply.

I find the landlord is entitled to an order of possession effective **September 30, 2016 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: September 02, 2016

Residential Tenancy Branch