



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 convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use issued February 18, 2017 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference on March 23, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover his filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to cancel a Notice to End Tenancy, the Landlord must present their evidence first as the

Landlord bears the burden of proving the grounds for ending the tenancy. Accordingly, the Landlord presented her evidence first.

The Landlord testified as follows.

The tenancy began September 15, 2014 for a one year fixed term following which it continued on a month to month basis. Monthly rent is \$1,400.00 payable on the 1st of the month. The Landlord stated that originally the advertised price was \$1,700.00 and the Tenant offered to pay \$1,400.00 and to pay all the utilities for the entire rental home.

The Landlord issued the Notice on February 18, 2017 as she wishes to move back into the rental home.

The Landlord confirmed that she currently lives in another community and has listed her property in that community for sale as of March 7, 2017. A letter from the realtor dated March 10, 2017 indicates the Landlord contacted the realtor as early as January 31, 2017.

The Landlord confirmed that the rental unit has three bedrooms upstairs and two bedrooms downstairs. She testified that she plans to move into the upstairs and will continue to rent out the basement suite.

The Tenant alleges that the Landlord intends to sell the property rather than move into the property. In the details of dispute section of his application the Tenant wrote:

I believe the landlord intends to sell the property and is giving notice under false pretense. The notice was initiated after I made a call to inform the landlord of a flood (recurring problem). She indicated the property is too much trouble and wants to sell. She said she would send me notice to which I replied you cannot give notice for the purpose of selling. She then said she would move in, fix the property, and sell. I told her again she cannot do that. Notice has now been received subsequent to that conversation.

The Landlord confirmed that the rental property has flooded three times since the tenancy began. She confirmed that when the Tenant called her, she was very stressed out and did not think before responding. She stated that she could not deny saying what she said on the phone, but that her intention is to move into the rental unit.

The Landlord stated that she was in the city in which the rental unit is located over the Christmas holidays and had discussions with her family. She stated that she was

concerned that the house was too big for her and stated that she is not in the best health but her family stated they would help her. She further stated that her granddaughter will be moving back in with her, as her 23 year old granddaughter had recently ended her relationship with her boyfriend.

The Landlord also stated that she originally moved from the rental home to the community in which she currently lives as her son lives nearby but he is much busier than she expected and she believes she will have more family support in the community in which the rental unit is located. She stated that she has three sisters in the city in which the rental unit is located and they would help her with the property.

The Landlord stated that she has not been in discussions with realtors about selling the rental unit, although she had previously discussed selling the rental unit with the Tenant, who is also a realtor.

The Landlord stated that at the time she had discussed selling the rental unit with the Tenant she had a cancer scare and had thought it appropriate to sell the rental home if her results were positive so that she would not leave the property to be dealt with by her children.

In reply to the Landlord's submissions the Tenant testified as follows.

The Tenant stated that he did not wish to upset the Landlord but he is aware that it has always been her intention to sell the rental property. The Tenant stated that he informed the Landlord that she can end the tenancy, but she must do so in accordance with the *Residential Tenancy Act*.

He provided a recording of a conversation he had with the Landlord on February 9, 2017 where the Landlord stated she wanted to sell the rental property because it was too much work. The Tenant also provided copies of numerous emails from the March and September 2016 wherein the Landlord asks the Tenant's opinion regarding the value of the home and the parties discuss her intention to sell.

The Tenant stated that the floods at the rental unit have been a result of a sump pump system in the basement. The Tenant stated that conversations with the Landlord about the flooding have been very difficult as the Landlord repeatedly says "the property is too much work, I need to sell it" whenever he informs her of any work which needs to be done.

The Tenant further stated that her testimony that she did not have conversations with other realtors in the City in which the rental unit was located is false, as in fact he (as a realtor) is aware that she has had conversations with two other realtors and one realtor came through the property in 2016.

The Tenant stated that the Landlord has also asked him to show her properties, and he has done so. He stated that was interested in a single level home as she did not want to navigate stairs. The Tenant stated that if she is moving back to the community in which the rental unit is located, she would not move into the rental home as the home has stairs and is too much work for her to manage.

The Tenant stated that the Landlord has clearly stated to him that her ultimate intention would be to find a home that is less work. He says that in all the conversations he has had with her, the Landlord has always indicated an intention to sell and that the only time she has ever suggested she would move into the rental unit is after he told her she could not end the tenancy simply to sell.

In reply the Landlord stated that the frustration she has had with the rental unit is that she has received photos from the neighbours about the condition of the yard, and the Tenant's with the downstairs renters (she suggested that it was the Tenant who unplugged the sump pump resulting in flooding in March of 2016). She also suggested that he did not clear the snow which resulted in flooding in the rental home.

The Landlord also stated that she believes that she has been priced out of the market in which the rental unit is located as she believes smaller homes are priced the same as the rental home such that she does not believe it is financially viable to sell the rental home and buy another.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

When a Tenant files to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement of the Landlord, the onus lies on the landlord to prove the two part test as follows:

1. The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and

2. The landlord must not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The evidence supports a finding that the Landlord had been discussing selling the rental home for a period of time prior to issuing the Notice. Email communication between the parties indicates the Tenant, as a realtor, was providing the Landlord information about comparable sales as well as possible one level homes for her consideration.

I accept the Landlord's evidence that she contemplated selling the rental home when she was worried about a possible cancer diagnosis. She candidly spoke about her concerns relating to leaving too much for her children to manage in the event of her passing. She stated that after the results came back negative, she was no longer interested in selling the home.

I further accept the Landlord's evidence that she spoke without thinking when she told the Tenant the home was too much work and she was going to sell.

The Landlord testified that she spoke with her family over the Christmas holidays and decided that it would be best to move back to the community in which the rental unit is located, as well as where her three sisters reside. She stated that her 23 year old granddaughter, who had lived with her previously, was now moving out of her apartment and would be sharing the rental unit with the Landlord. The evidence also indicates the Landlord contacted a realtor on January 31, 2017 for the purpose of selling her townhome in which she currently resides, and that this property is now listed for sale as of March 8, 2017.

These types of applications are always difficult, as it is impossible to predict with 100% accuracy what the future may hold. What I must determine is whether the Landlord truly *intends* to use the rental unit for the purposes stated on the Notice. I must also find that the Landlord does not have an ulterior motive for ending the tenancy.

The reason stated in the Notice was,

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

In this case, I find that the Landlord intends to move back into the rental unit. Although she may have contemplated selling the rental home in the past, I accept her testimony that she changed her mind and honestly intends to reside in the rental unit with her

granddaughter. I further find that she does not have an ulterior motive for issuing the Notice.

Should the Tenant's suspicions be accurate, he is at liberty to apply for further compensation pursuant to section 51(2) of the *Residential Tenancy Act*.

I therefore dismiss the Tenant's Application for an Order cancelling the Notice.

Pursuant to section 55 of the *Residential Tenancy Act*, I grant the Landlord an Order of Possession effective April 30, 2017. The Landlord must serve the Order of Possession on the Tenant and may file and enforce it in the B.C. Supreme Court.

Conclusion

The Tenant's Application for an Order cancelling the Notice is dismissed. The Landlord is granted an Order of Possession. Having been unsuccessful, the Tenant's request to recover the filing fee is also dismissed.

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 30, 2017

Residential Tenancy Branch