



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the applicant; the respondent and her agent.

At the outset of the hearing I confirmed with the applicant that she moved out of the rental unit on July 1, 2016. As such, the applicant no longer seeks to cancel a notice to end tenancy. I amend this application to exclude the matter of possession.

I also note that the respondent was the purchaser of the property from the previous landlord and the tenancy ended before the respondent took possession of the rental unit. As a result, I find that at all material times the respondent was not a landlord to this applicant however, this does not prohibit the applicant from pursuing this claim against the respondent, pursuant to Section 51(2) of the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

The issues to be decided are whether the applicant is entitled to a monetary order for compensation from the respondent for not using the property for the stated purpose in a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the respondent for the cost of the Application for Dispute Resolution, pursuant to Sections 51, 67, and 72 of the *Act*.

Background and Evidence

The applicant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the applicant and the former owner of the property (ML) on September 3, 2013 for a 1 year fixed term tenancy beginning on September 1, 2013 for a monthly rent of \$825.00 due on the 1st of each month with a security deposit of \$412.50 paid; and

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the former owner of the property (ML) on April 11, 2016 with an effective vacancy date of June 6, 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 this Notice because the purchaser intends in good faith to occupy the rental unit and the landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The applicant submitted that after she received the Notice she contacted the original owner's real estate agent who told her that the purchasers were originally planning to move into the unit. The applicant wrote on her Application for Dispute Resolution:

"...the current owner sold the unit and the real estate agent advised me the owner was moving in I was in contact with the new owner at first and stated that they were going to rent it out and then said they were moving in."

The applicant submitted that she now knows that the new owners have rented the unit out to new tenants.

The respondent submitted that while the notice to end tenancy issued to the applicant was dated April 11, 2016 the respondent did not even know the property was for sale on that date. In addition, the respondent and her agent testified that the property was not listed for sale until April 26, 2016 and the respondent made her offer to purchase on April 27, 2016.

The respondent also testified that the seller (ML) had advised them that there was a tenant in the rental unit but that she was already moving out of the rental unit by the end of June 2016. The respondent testified they never requested the applicant be served with a notice to end the tenancy because they thought the tenancy was already ending.

In support of their position the respondent submitted the following documents:

- A copy of the real estate listing confirming that the subject property was listed on April 26, 2016; and
- A copy of a Contract of Purchase and Sale for the property dated April 27, 2016. While this document listed several conditions that were required to be satisfied prior to completion I note there were no conditions regarding issuing the applicant with a notice to end tenancy.

Analysis

Section 49 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 and/or the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit or renovate or repair the rental unit in a manner that requires it to be vacant.

Section 51(2) states that if steps have not been taken to accomplish the stated purpose for ending the tenancy under Section 49 within a reasonable time after the effective date or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice the landlord or purchaser must pay the tenant an amount that is the equivalent of double the amount of rent payable under the tenancy agreement.

In the case before me, I find that the documentary evidence confirms the previous owner of the property (landlord ML) issued the 2 Month Notice to End Tenancy prior to entering into the contract for sale with the respondent. As a result, I find that the respondent was not a party to the issuance of the Notice and therefore cannot be held responsible for the payment of any compensation to the applicant, regardless of the reasons noted on the 2 Month Notice or the respondent's subsequent use of the property.

However, as Section 51(2) allows that either the landlord (original owner) or the purchaser may be held responsible for this compensation, I note this decision does not preclude the applicant from now pursuing a claim against the original owner (ML).

Conclusion

Based on the above, I dismiss this Application for Dispute Resolution in its entirety.

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: April 04, 2017

Residential Tenancy Branch