



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated March 21, 2017.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was served on the Tenants by mailing, by registered mail to where the tenants reside on March 22, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on Landlord by mailing, by registered mail to where the landlord resides on April 6, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the two month Notice to End Tenancy dated March 21, 2017?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on February 1, 2016. The present rent is \$1348 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$650 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- All of the conditions for 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

Policy Guideline #2 provides as follows

“GOOD FAITH REQUIREMENT

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.”

Unfortunately this tenancy has been marred by acrimony and ill feeling. The landlord has been unsuccessful in attempting to end this tenancy for cause on 2 separate occasions. The tenants' claim for damages including of over \$15,000 including aggravated damages was dismissed in a previous arbitration. The tenants take the position the landlord has failed to properly look after their interest in a dispute with the strata council and an upstairs tenant. The landlord takes the position the tenants complaints are without basis.

The landlord testified that at the end of February 2017 as a result of the continued acrimony and resulting financial losses to her she decided to put the rental unit up for sale.

The landlord testified she is acting in good faith and has entered into a contract of purchase and sale for the rental unit with a third party that is set to close at the start of June 2017.

The landlord presented the following evidence in support of her submission she is acting in good faith and that she wants to sell the property to a third party who intends to occupy the rental unit.

- The 2 month Notice to End Tenancy dated March 21, 2017 and setting the end of tenancy for May 31, 2017.
- A document entitled Tenant Occupied Property – Buyers Notice to Seller for Vacant A Possession dated March 16, 2017 signed by the purchaser
- Pages 1, 5 and 7 of the Contract of Purchase and Sale which was dated March 13, 2017. She did not include 4 pages.
- A copy of a letter to the Tenants dated March 27, 2017 from a real estate company who represented the landlord
- A copy of an e-mail dated March 29, 2017 from the tenants to the real estate firm questioning the failure of the landlord to provide a copy of the contract for purchase and sale
- The copy of a retainer letter dated April 20, 2017 from the solicitor for the landlord.
- Copies of an exchange of e-mails between the landlord and the tenants on April 21, 2017 and April 22, 2017.
- The copy of a letter from the purchaser which is undated stating that she intends to move into the rental unit.
- The copy of a e-mail from the real estate agent for the buyer dated March 20, 2017 requesting that her client be given access to make measurements.

The tenants presented 87 pages of submissions and evidence. Much of the evidence was an attempt to present testimony presented from the previous hearings. Much of it is irrelevant to the matters before me in this hearing.

Analysis:

Section 49(5) provides as follows:

49(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) 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;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I do not accept the submission of the Tenants that I should determine the landlord is not acting in good faith given the acrimony in the tenancy relationship and the previous Notices to End Tenancy. Section 49(5) requires that the landlord be acting in “good faith to sell the rental unit.” The tenant failed to provide sufficient evidence that the proposed sale is a sham. The evidence indicates the proposed purchaser to be an arms length third party. There is sufficient evidence that the new purchaser wishes to move in. I do not accept the submission that a landlord cannot sell a rental property in a situation such as this where there has been acrimony between the parties.

The Residential Tenancy attempts to balance the rights of landlords and Tenants. In this case the Act provides that before a landlord can serve a 2 month Notice to End Tenancy on the tenants that “all the conditions on which the sale depends have been satisfied” and the purchaser or close family member intends in good faith to occupy the rental unit. I determined the landlord failed to prove that “all of the conditions on which the sale depends have been satisfied” for the following reasons:

- The contract of purchase and sale introduced into evidence by the landlord was not a complete document. It is in the standard form produced by the Real Estate Board of Greater Vancouver. However, the document produced by the landlord only contained 3 out of 7 pages. Pages 2, 3, 4 and 6 were not included.
- The tenant produced a copy of the standard form. Page 2 of that standard form provides for the various “subject to clauses” that might be used by the parties in the sale of real estate. Further, the standard form had 6 pages. The document produced by the landlord indicates that the contract of purchase and sale used in this transaction had 7 pages. It appears there is an additional page different from the standard form.
- The explanation of the landlord was inconsistent and not satisfactory. At one stage in the hearing she testified she did not produce it because it contained private information about the purchaser. At another stage in the proceeding she testified there was no “subject clauses.”
- The landlord testified that if required she would fax the full document to the RTB but she did not want it shared with the Tenants. It is not appropriate for an arbitrator to consider evidence that has not first been presented to the other side. Further, the landlord failed to comply with the Rules of Procedure dealing with the timely exchange of evidence.
- The tenants had previously e-mailed and written the landlord demanding the production of this evidence. It was clear this issue was contentious and the tenants were demanding production of this relevant document.
- The landlord relies on a letter sent by her real estate agent to the tenants dated March 27, 2017. I do not accept the submission of the landlord that the letter supports the allegations that all conditions have been met. It indicates the completion and closing date. It states the name of the new owner is on the ‘Notice to Vacate.’ The letter further states the offer was accepted by the current owners (the landlord) on March 14, 2017 and that the buyer did not agree to assume the existing tenancy and has asked for vacant possession. However, it does not cover whether all of the conditions on which the sale depends have been satisfied.
- The letter signed by the new purchaser is undated and has not been sworn. Further, while the letter states she intends to move into the rental unit it does not speak to whether there were conditions on which the sale depends, if so what were they and when were they removed.
- The new purchaser signed a form dated March 16, 2017 that states all subjects have been removed. However, given the acrimony between the landlord and tenant, the problems with the evidence referred to above, the failure of the landlord to produce a complete contract of purchase and sale and the failure of

the real estate agent and purchaser to attend the hearing to give affirmed testimony I determined that I am unable to accept this document at face value.

Conclusion::

After carefully considering all of the evidence I determined that while the landlord has established a good faith intention to sell the property the landlord failed to establish that at the time the 2 month Notice to End Tenancy was served all of the conditions for sale had been satisfied. I appreciate the landlord will find this very upsetting. However, the law applies to all and the landlord cannot avoid her obligation to follow the law.

As a result I order that the 2 month Notice to End Tenancy dated March 21, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I ordered that the landlord reimburse the tenants the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

This decision is final and binding on the parties.

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: May 12, 2017

Residential Tenancy Branch