



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, OLC, FF

Introduction

This hearing dealt with a tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, as amended.

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

When the tenant originally filed her application she was in receipt of a 2 Month Notice to End Tenancy for Landlord's Use of Property that had been improperly served by email on March 20, 2017 and issued before the purchaser of the property had signed a written notice to the landlords instructing them to give the tenant a notice to end tenancy. Both parties were of a consistent position that the Notice emailed on March 20, 2017 is not valid and was replaced by a 2 Month Notice to End Tenancy for Landlord's Use of Property that was properly served upon the tenant on April 19, 2017. The tenant served an Amendment to her Application for Dispute Resolution to dispute the April 19, 2017 Notice. Accordingly, the March 20, 2017 Notice was cancelled summarily and for the remainder of this decision the crux of this proceeding revolves around the validity of the April 19, 2017 Notice.

The tenant had named a realtor as a respondent; however, I was not satisfied that the realtor has standing as a landlord and I excluded the realtor as a named party to this dispute. The realtor was permitted to provide testimony as to documents that were signed by the purchaser of the property and communications she had with the tenant and the buyer and the buyer's mother.

On another procedural note, the landlords had filed a Landlord's Application for Dispute Resolution to seek an Order of Possession but have not yet served it upon the tenant. I confirmed that the landlords seek an Order of Possession based upon the same Notice to End Tenancy that the tenant has disputed. Accordingly, I informed the parties that it is not necessary for the landlords to make a separate application for an Order of Possession as section 55(1) of the Act provides that I must grant an Order of Possession if the Notice to End

Tenancy is upheld and meets the form and content requirements of the Act. The landlords requested that I cancel the hearing set to hear their Application and I have done so. The file number for the landlord's Application for Dispute Resolution is provided on the cover page of this decision.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property served upon the tenant on April 19, 2017 be upheld or cancelled?

Background and Evidence

The parties executed a tenancy agreement for a tenancy that commenced on March 1, 2015 requiring the tenant to pay rent of \$975.00 on the first day of every month and the landlords collected a security deposit of \$487.50. The parties executed a second tenancy agreement in August 2016 reflecting a month to month tenancy and a monthly rent obligation of \$1,000.00 due on the first day of every month. The second tenancy agreement does not indicate a start date for the second tenancy agreement but both parties provided consistent testimony that it commenced December 1, 2016.

On March 3, 2017 the landlords entered in a contract of purchase and sale for the property with a completion date of May 31, 2017 and vacant possession to be provided to the purchaser on June 1, 2017. The realtor appearing at the hearing acted as the real estate agent for both the landlords and the buyer. On March 8, 2017 the sales contract became unconditional. On March 16, 2017 the landlord sent a Mutual Agreement to End Tenancy to the tenant via email which they did not agree to sign.

On March 20, 2017 the landlords sent a 2 Month Notice to End Tenancy for Landlord's Use of Property to the tenant via email with an effective date of May 31, 2017. The reason for ending the tenancy as indicated on this Notice is: "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. This is the first 2 Month Notice that was originally disputed by the tenant but subsequently considered invalid by the parties, as described earlier in this decision).

It appears that on April 2, 2017 the purchaser of the property digitally signed a written notice instructing the landlords to give the tenant notice to end the tenancy as the buyer intends in good faith to occupy the rental unit ("the buyer's written notice"). On April 12, 2017 the contract of purchase and sale was amended to extend the completion date to June 30, 2017. On April 19, 2017 the landlords served the tenant with the subject 2 Month Notice to End Tenancy for Landlord's Use of Property (the subject "2 Month Notice") with an effective date of June 30, 2017. The 2 Month Notice served upon the tenant on April 19, 2017 indicates the reason for ending the tenancy is 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 or a close family member intends in good faith to occupy the rental unit.” The tenant amended her Application to dispute this Notice and the enforceability of this Notice is crux of this dispute resolution proceeding.

The landlords are of the position that they issued the subject 2 Month Notice because the sales agreement was unconditional and the purchaser had provided written notice indicating he intended to occupy the rental unit and instructed the landlords to serve the tenant with the appropriate Notice to End Tenancy.

The tenant called into question the purchaser’s good faith intention to occupy the rental unit and was of the position the buyer is motivated to end the tenancy because the tenant declined to pay a greatly increased amount of rent. In support of the tenant’s position the tenant submitted the following:

- When the buyer viewed the rental unit the tenant asked whether the buyer would be using the unit as an investment or place to live and the realtor responded that the rental unit would be used as an investment property but for more profit.
- When the buyer viewed the property the viewing was brief and did not appear to include the common areas of the residential property that one would ordinarily expect from a person intending to occupy the property as their residence.
- The March 20, 2017 email received from the landlord, which included the first 2 Month Notice, also indicates that the landlord believed the tenant could remain in the rental unit so long as the tenant entered into a new agreement with the buyer before the end of May 2017.
- The tenant was offered the opportunity to remain in the rental unit in exchange for rent of \$1,300.00 and a fixed term of two to three years by the buyer/realtor.
- On April 2, 2017 the tenant asked the landlord, via email, whether the buyer would be moving into the rental unit or continuing to rent the unit. The tenant pointed out that the purchaser would inherit her tenancy agreement unless the buyer was going to be moving in and had given the landlord written notice of such. The landlord acknowledged shortly thereafter, via email, that she did not know whether the buyer would be moving in or renting out the unit and the realtor had advised the landlord to issue the eviction notice (the first 2 Month Notice).
- On April 3, 2017 the tenant advised the landlord, via email, that she has filed her Application for Dispute Resolution to dispute the first 2 Month Notice. Later that same day, the tenant received a text message from the realtor indicating that the buyer would permit the tenant to stay if the tenant would pay rent of at least \$1,250.00 and that if the buyer cannot obtain that rate then he would rather use the unit himself.
- On April 3, 2017 the tenant responds to the landlord and the realtor, via email, offering the buyer rent of \$1,100.00 per month. The realtor responds to the tenant and advises the tenant that the buyer rejected the tenant’s offer and would rather use the unit himself.

The tenant pointed out that during the viewing of the property by the buyer; before the buyer signed the buyer's written notice of April 2, 2017; and, even after the buyer signed the written notice of April 2, 2017 the tenant was provided information and offers that the buyer would continue to rent the unit to the tenant in exchange for a significant increase in rent. The tenant is of the position that the buyer does not have a good faith intention to occupy the rental unit and intends to rent the unit at a greatly increased monthly rent.

The realtor stated that on April 4, 2017 she was instructed to stop asking for the tenant to pay more rent by the buyer's mother. The realtor explained that when the buyer was seeking to obtain the tenant's agreement to pay more rent the buyer thought he could continue to live with his mother for another few years; however, the buyer's mother, and client of the realtor, informed the realtor that her son was mistaken and cannot continue to live with her and that she bought the rental unit so that he would move out of her home.

The tenant responded by pointing out that the instructions to the realtor from the buyer's mother were received only after the tenant notified the landlords on April 3, 2017 that she had filed to dispute the 2 Month Notice and the tenant suggests that the April 4, 2017 message was merely created in an attempt to produce evidence in support of upholding the 2 Month Notice.

The realtor also acknowledged that the buyer did not view many areas of the property during the initial viewing of the property because the realtor is very familiar with the amenities of the property.

The landlord and the realtor submitted that it is possible that the sales contract will collapse if the landlords cannot provide vacant possession to the buyer as stipulated in their sales contract; and, that a collapse would likely result in losses for the buyer and/or sellers. I did not consider this submission relevant to the matter before me as the landlords' decision to agree to provide the purchaser vacant possession of the rental unit on March 3, 2017 when they did not have vacant possession of the rental unit and any resulting breach of the sales contract is a matter that would have to be resolved between the buyer and sellers in the appropriate forum. However, I also informed the parties that should the 2 Month Notice to End Tenancy be cancelled the parties remain at liberty to explore ending the tenancy by way of a Mutual Agreement to End Tenancy. The parties were given the opportunity to discuss a mutual agreement to end tenancy during the hearing but an agreement could not be reached in the time allotted. At the end of the hearing the parties confirmed that they understood that my decision will be to decide whether the 2 Month Notice should be upheld or cancelled and should the 2 Month Notice be cancelled the parties remain at liberty to explore a mutual agreement to end tenancy.

Analysis

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

The 2 Month Notice served upon the tenant on April 19, 2017 is consistent with a notice to end tenancy issued pursuant to section 49(5) of the Act which provides that a landlord may end a tenancy where:

- (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.

[Reproduced as written with my emphasis underlined]

Section 49 of the Act permits a tenant to dispute a 2 Moth Notice to End Tenancy served to the tenant. Accordingly, I find that not only do the landlords have the burden to prove they were in a lawful position to serve the tenant with the 2 Month Notice but the buyer's good faith intention is also subject to examination.

Based upon the documentary evidence before me, including the sales contract signed on March 3, 2017, the "Removal of subject to clause" document signed on March 8, 2017, and the buyer's written notice signed on April 2, 2017 I am satisfied that the landlords were in a lawful position to serve the tenant with a notice to end tenancy under section 49(5)(c) on or after April 2, 2017. The landlords did so on April 19, 2017; however, the tenant has disputed the 2 Month Notice calling into the purchaser's good faith intention to occupy the rental unit. Accordingly, the purchaser's good faith intention to occupy the rental unit is the primary issue to determine in this case.

Based on the undisputed verbal testimony before me, emails and text messages the tenant received from the landlords and the realtor with respect to the buyer's willingness to continue to rent the unit to the tenant in exchange for more rent, even after signing the buyer's written notice of April 2, 2017, I find the tenant has shown a basis for calling into question the buyer's good faith intention.

Residential Tenancy Branch Policy Guideline 24: *Good Faith Requirement when Ending a Tenancy* provides policy statements and information with respect to the good faith requirement. The policy guideline provides, in part:

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.

While I recognize that all of the communication with the tenant with respect to permitting the tenant to continue to rent the unit and increasing the monthly rent has been through the landlords and/or realtor, I find the absence of any written submissions, oral testimony or evidence from the buyer fails to satisfy me that the buyer has a good faith intention to occupy the rental unit. Also of consideration is that the realtor's testimony was that the buyer's mother, not the buyer himself, had instructed the realtor to stop seeking the tenant's agreement to pay more rent and an instruction from the buyer's mother does not satisfy me that the buyer has a good faith intention to occupy the rental unit. Rather, I find the preponderance of evidence points to the buyer having an ulterior motive to garner more rent from the rental unit and since the tenant was not agreeable to paying the amount sought by the buyer, the buyer seeks to end the existing tenancy.

In light of the above, I cancel the 2 Month Notice serve upon the tenant on April 19, 2017 with the effect that the tenancy continues until such time it legally ends.

Since the tenant was successful in this Application, I award the tenant recovery of the \$100.00 filing fee she paid for this application. I provide the tenant with a Monetary Order in the amount of \$100.00 to serve and enforce upon the landlords as necessary. The tenant is authorized to deduct \$100.00 from a subsequent month's rent to satisfy the Monetary Order.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use of Property sent to the tenant via email in March 2017 is of no force or effect. The 2 Month Notice to End Tenancy for Landlord's Use of Property served upon the tenant on April 19, 2017 is cancelled and the tenancy continues until such time it legally ends.

The tenant has been awarded recovery of the filing fee and provided a Monetary Order in the amount of \$100.00 in recognition of this award. The tenant has been authorized to deduct \$100.00 from a subsequent month's rent to satisfy the Monetary Order.

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