



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, MNR, OLC, FF

Introduction

The tenant applies to cancel a two month Notice to end tenancy dated April 28, 2017 and received April 30, 2017. The Notice claims that the landlord has entered into an unconditional agreement for purchase and sale of the property and that the purchaser has given written notice that she intends to occupy the premises.

The tenant also seeks relief in the nature of a compliance order and a monetary award for the loss of a deck and for his repair work on the deck.

The tenant's claim regarding the deck is an "unrelated claim" within the meaning of Rule 2.3 of the Rules of Procedure. I exercise my discretion and sever and dismiss that portion of the claim, with leave for the tenant to immediately re-apply.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show that the landlord has established the essential grounds for giving the two month Notice?

Background and Evidence

The rental unit is presently the three bedroom upper portion of a house. There is no written tenancy agreement. Originally, in 2011, the tenant rented the entire house for \$2300.00 or \$2400.00 per month. That arrangement was changed by mutual agreement of the parties in March 2017, after which the tenant rented only the three

bedroom upper portion of the home for a monthly rent of \$1400.00, payable \$700.00 of the first of the month and the remainder in the middle of the month.

The landlord holds no security or pet damage deposit.

The landlord testified that the purchaser of the house removed all remaining purchase conditions or “subject to” clauses in June. She provided him with a note confirming she wished to move in, also given after the Notice was issued.

Analysis

Section 49 (5) of the *Residential Tenancy Act* is clear,

(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.

The landlord failed to file a copy of the agreement for sale. I decline to comment on the effect of its absence in light of the apparent shortcomings in the Notice.

At the time the Notice was given in April there existed a number of conditions to the sale which were only removed in June. Further, at the time the Notice was given the landlord did not have the purchaser's request in writing to give notice to end the tenancy.

Conclusion

The ending of a tenancy is a serious matter and a landlord will be required to strictly comply with the law in doing so.

The Notice to End Tenancy dated April 28, 2017 does not comply with the law and it must be cancelled.

The landlord is free to issue another Notice at his discretion.

The tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize him to reduce his next rent due by \$100.00, in full satisfaction of the fee.

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: June 20, 2017

Residential Tenancy Branch