



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was represented by their agent SA (the "Landlord") who confirmed she was authorized to represent the respondent.

As both parties attended the hearing I confirmed that there were no issues with service. The parties confirmed receipt of one another's materials. I find that the 2 Month Notice, tenants' application and respective evidence were served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy began in July, 2014. The monthly rent is \$700.00. A security deposit of \$350.00 was paid at the start of the tenancy and is still held by the landlord.

There were previous hearings in regards to this tenancy under the file numbers on the first page of this decision. In a previous hearing where the tenants disputed a separate

2 Month Notice issued by the landlord, the arbitrator concluded that the landlord did not prove on a balance of probabilities that they intended in good faith to sell the rental property and the purchaser intended to occupy the unit.

The landlord testified that the present 2 Month Notice was issued as the landlord intends to sell the property, 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 as the purchaser or a close family member intends in good faith to occupy the rental unit. The landlord said that the present 2 Month Notice was issued on May 31, 2017.

The landlord submitted into written evidence a copy of the Contract of Purchase and Sale and the letter provided by the purchaser. The Contract shows that it is subject free and open for acceptance by March 31, 2017 at 5:00pm. The Addendum to the Contract provides a Completion Date of August 18, 2017. Schedule A of the Contract provides a Term that the seller will provide vacant house possession. The letter signed by the purchaser and dated May 30, 2017 states that the purchaser requires vacancy as she intends to use the property for her personal residence. The landlord's adult daughter, appeared as a witness and testified that she understood the sale of the rental unit to be a bona fide sale to a purchaser who intends to occupy the unit.

The tenants testified that there has been a history of conflict with the landlord and they question the good faith intention of the landlord and whether this is a bona fide sale. The tenants said that a heavily redacted Contract of Purchase and Sale was submitted into evidence at a previous hearing where another arbitrator ruled it as an invalid contract. The tenants said that the rental property requires maintenance such as repair of the septic tank and the landlord's failure to perform the repairs should be interpreted as evidence that there will be no sale of property.

Analysis

The tenants argue that this matter has already been adjudicated at an earlier hearing. While the principle of *res judicata* prevents me from making a finding in regards to a matter already determined by another arbitrator appointed under the *Act*, I find that the present matter arises from a 2 Month Notice issued on May 31, 2017 and is a distinct and separate issue from the earlier hearing which dealt with a separate 2 Month Notice. Furthermore, the parties testified that the written materials submitted into evidence for this hearing differ from that submitted in the earlier hearing as it is not redacted and some amendments to the dates have been made.

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the case at hand the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the landlords intends in good faith to sell their property and that all of the conditions for sale have been satisfied. The landlord must also show that the purchaser has requested in writing, that the landlord issue a Notice to End Tenancy because the purchaser intends in good faith to occupy the rental unit.

The tenant questions the intention of the landlord and raises a good faith argument about the landlord's plans.

Residential Tenancy Branch Policy Guideline 2 suggests that 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.

Policy Guideline 2 reads in part as follows:

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.

I find that there is sufficient evidence to find that the landlord intends, in good faith, to sell the rental unit. I find that the copy of the Contract of Purchase and Sale to be on its face, a valid and enforceable contract. I accept the landlord's evidence that subjects have been removed and the completion date of the sale is August 18, 2017. The landlord's daughter appeared as a witness and testified as to the landlord's bona fide intention to

sell the property. She also testified that she has been told the purchaser intends to occupy the rental unit. I accept the letter provided by the purchaser, dated May 30, 2017 as evidence of the purchaser's intention to personally occupy the rental unit.

I find that the landlord has provided sufficient evidence to support their intended use of the property. I accept the landlord's evidence that the earlier 2 Month Notice was issued for the same purpose but they were unable to provide full documentary evidence in support. I accept the landlord's position that all of the subjects for the sale of the property have been removed. I accept the landlord's evidence that the additional terms of the contract of purchase and sale are not conditions of the sale as stated in the 2 Month Notice. I find that the written evidence submitted in conjunction with the testimonies of the landlord's agent and witness has demonstrated the landlord's good faith intention. I find that on a balance of probabilities I am satisfied the landlords will use the rental unit for the purpose expressed.

Therefore, I find on a balance of probabilities that all of the conditions for the sale of the rental property has been satisfied, and the purchaser has requested the landlord issue a Notice to End Tenancy because the purchaser intends to occupy the rental unit. I dismiss the tenants' application to cancel the landlords' 2 Month Notice.

Section 55(1) of the *Act* reads in part as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52..., and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...

As I have dismissed the tenant's application and I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the *Act*, I issue a formal Order of Possession in the landlord's favour pursuant to section 55. As the effective date of the 2 Month Notice has passed, I issue an Order of Possession effective two days after service.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is dismissed.

I issue an Order of Possession to the landlord, effective two days after service.

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: August 15, 2017

Residential Tenancy Branch