



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTERN RENTAL PROPERTY MANAGEMENT GROUP/COLDWELL
BANKER PRESTIGE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL O

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenants to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated June 30, 2017 (the “2 Month Notice”) and for other unspecified relief.

The tenants and an agent for the landlord (the “agent”) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The agent testified that the landlord did not submit evidence in response to the tenants’ application. The agent also confirmed that the landlord received the tenants’ documentary evidence and that they had the opportunity to review that evidence prior to the hearing.

Issue to be Decided

- Should the 2 Month Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 16, 2016 and reverted to a month to month tenancy after August 31, 2017. The tenants confirmed receiving the 2 Month Notice and disputed it on July 7, 2017 which is within the 15 day timeline provided for under the *Act*.

The tenants raised the issue of good faith in their application and have alleged that the landlord did not issue the 2 Month Notice in good faith as the tenants provided evidence that they had received an email indicating that the property was going to be listed for sale yet the reason listed on the 2 Month Notice was the following:

“The rental unit will be occupied by the landlord or the landlord’s close family member (parent, spouse or child; or the parent or child of that individual’s spouse).”

[Reproduced as written]

The agent claims that the company name listed as landlord is acting on behalf of the owner(s) of the rental property. The agent was reminded that the landlord did not submit any documentary evidence to support such a claim and was also reminded that the 2 Month Notice and tenancy was filled out by the company that the agent directly works for and not the names of the owner(s) of the rental property. Furthermore, the tenants confirmed under oath that they were not aware of the name of the property owner(s) and had always paid their rent to the respondent landlord company named in this matter and considered the company name on the tenancy agreement as landlord to be their landlord.

The agent acknowledged that in error, the company he works for did not include the name of the property owner(s) and that they company he works for was acting as agents for the property owners. The agent also acknowledged that it is the intention of the property owner(s) to list the property for sale to which the agent was reminded that a tenancy survives the sale of a rental property under the *Act*.

There was no evidence provided by the agent that any member of the landlord company would be occupying the rental unit as claimed on the 2 Month Notice.

Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find as follows.

The 2 Month Notice dated June 30, 2017 and served on the tenants has an effective vacancy date of August 31, 2017 which has now passed. The tenants disputed the 2 Month Notice on July 7, 2017 which is within the fifteen day timeline provided for under section 49 of the *Act* to dispute a 2 Month Notice. When tenants dispute a Notice, the

onus of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled and the tenancy continues.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when tenants file to cancel a 2 Month Notice for Landlord's Use of Property and calls into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an honest intention, with no ulterior motive to end the tenancy.

The agent confirmed that he did not have any documentary evidence, witnesses or other evidence to support the reason listed on the 2 Month Notice. Furthermore the agent confirmed that the name listed on the 2 Month Notice is not the name of the property owner(s) and that the respondent landlord listed on the 2 Month Notice does not intend to occupy the rental unit as listed on the 2 Month Notice.

As a result of the above, and without further evidence to prove the contrary, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the burden of proof is on the landlord to prove the 2 Month Notice is valid and was issued in good faith. Given the above, I am unable to find that the 2 Month Notice was issued in good faith as the agent confirmed that the property owner(s); who I note are not listed on the tenancy agreement, intend to list the rental property for sale. Based on the above, **I cancel** the 2 Month Notice due to insufficient evidence that the 2 Month Notice was issued in good faith and for the reason listed on the 2 Month Notice.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

As the tenants' application was successful, I grant the tenants the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$100.00**.

Conclusion

The 2 Month Notice issued by the landlord is cancelled and is of no force of effect.

The tenancy shall continue until ended in accordance with the *Act*.

The tenants are granted a monetary order pursuant to sections 67 and 72 of the *Act* in the amount of \$100.00 in full satisfaction of the recovery of the cost of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 20, 2017

Residential Tenancy Branch