



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 July 24, 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 personally served on the Tenant by posting on July 24, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on MH (the seller) by mailing, by registered mail within one week of receiving the Application for Dispute Resolution. The tenant was unable to find the address of the buyer. Her Application for an Order of substituted service was dismissed. She recently discovered the name and address of the buyer and attempted to serve him but he was not served within the time frame required by the Act. 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 tenant is entitled to an order cancelling the two month Notice to End Tenancy dated July 24, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began in 2009. The tenancy agreement provided that the tenant(s) would pay rent of \$3500 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit and pet damage deposit totaling \$3500 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

The respondents provided evidence as follows:

- MLS listing for the property
- Contract of Purchase and Sale dated July 11, 2107
- Contract of Purchase and sale Addendum
- Subject of Removal and Appointment of Conveyancer
- Copy of deposit cheque, and
- Notice to Tenants.

These documents indicate the sale is to complete on October 31, 2017.

The agent for the purchaser testified that he prepared the document titled Notice to Tenants which was signed by the buyer. This document was prepared after a discussion with the buyer who told him that the buyer intended to move into the rental unit. That document states "...the buyer requires vacant possession of the property for personal use. The buyer hereby directs the seller to provide notice to the tenant in accordance with the BC Residential Tenancy Act."

The tenant testified she has found alternative accommodation and wanted to preserve her rights to make a claim against the purchaser if he does not move in.

Analysis:

Based on the evidence presented I determined there is sufficient grounds to end the tenancy. I accept the evidence presented 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. I accept the testimony of the agent for the buyer that the buyer has told him that he intends to move into the rental property.

Determination and Orders:

I ordered that the application of the tenant to cancel the 2 month Notice to End Tenancy dated July 24, 2017 be dismissed without leave to re-apply.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective September 30, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

As a courtesy to the parties I have included section 51 of the Act which deals with the tenant's rights to claim if the landlord fails to comply with the Act.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

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: September 21, 2017

Residential Tenancy Branch