



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for landlord's use of property pursuant to section 55;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence on file.

Issues

Is the landlord entitled to an order of possession for landlord's use of property (the "2 Month Notice")?

Background and Evidence

The tenancy began on October 1, 2015 with a monthly rent of \$2000.00 payable on the 1st day of each month.

Counsel for the landlord submits that on June 28, 2017 an adult residing with the tenant was personally served with the 2 Month Notice. A Proof of Service form of the 2 Month Notice was provided on file. The reason for issuing the 2 Month Notice was 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 Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The effective date of the Notice was August 31, 2017.

The landlord argues the Notice was issued in accordance with section 49(5) of the Act as the landlord entered into an agreement in good faith to sell the rental unit, all conditions on which the sale depends were satisfied and the purchaser asked the landlord in writing to give Notice to the tenant. The landlord submitted a copy of the contract of sale which stipulates the purchaser would have vacant possession of the home on the completion date. The landlord submitted a copy of the final subject removal dated June 28, 2017 as proof that all conditions on which the sale depended were satisfied. The landlord submitted a copy of the written request from the buyer for vacant possession.

The landlord argues the tenant did not dispute the 2 Month Notice within the 15 day deadline under 49(8) of the Act and as such is conclusively presumed to have accepted the tenancy ended.

The tenant acknowledged receipt of the 2 Month Notice on June 28, 2017. The tenant argues she did not dispute the 2 Month Notice as she believed the house had been sold. She later received instructions from the prospective buyer that she would be permitted to continue her tenancy. She claims the buyer also notified the landlord and therefore the landlord should have cancelled to Notice.

The tenant further argues that the sale never completed as the buyer pulled out of the agreement prior to the completion date of August 31, 2017. The tenant argues that as the sale was not completed the 2 Month Notice should be void. Further, the tenant relied on the purchaser's agreement to allow her to continue her tenancy. Counsel for the tenant argues that to allow a Notice to take effect before the completion of a sale would allow "sham" sales transactions to affect an end to a tenancy.

In rebuttal, the landlord submits that the Notice was never withdrawn by the landlord and there is no provision under the Act, permitting a purchaser to withdraw a Notice.

Analysis

Section 49(5) of the Act provides as follows:

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.

I am satisfied that the tenant was served with the 2 Month Notice on June 28, 2017, pursuant to section 88 of the Act. I find the 2 Month Notice complies with the form and content requirements of section 52 of the Act.

I accept the landlord's testimony and evidence and find that at the time the 2 Month Notice was issued, all of the requirements of section 49(5) were met. The landlord entered into a good faith agreement to sell the property, all the conditions on which the sale depended were completed and the purchaser requested, in writing, to give Notice to the tenant. Accordingly, the only recourse for the tenant at the time would have been to dispute the Notice within the 15 day time limit provided for under the Act.

I dismiss the tenants argument that all of the conditions on which the sale depended were not completed as the buyer pulled out of the agreement prior to the completion date. If a landlord could not provide a 2 Month Notice until the completion date of the sale agreement, a purchaser would essentially have to wait an additional 2 months, after the completion date, to obtain vacant possession of a home. In fact, it could be argued that it would then in fact be up to the purchaser, not the seller, to issue the 2 Month Notice as they would essentially become the landlord after the completion date. Given the wording of section 49(5) that the landlord enters into an agreement in "good faith" to sell the rental unit, I find the intent of the Act is that all conditions on which the sale depends, such as final subject removal, have been completed, not the actual completion of the sale. I also dismiss the tenant's argument that she relied on the purchaser's agreement to continue her tenancy. I find the 2 Month Notice was issued by the landlord, and it was not withdrawn by the landlord. The purchaser was not the landlord and did not have any authority under the Act to cancel or withdraw the 2 Month Notice.

Pursuant to section 49 of the Act, the tenant may make a dispute application within fifteen days of receiving the 2 Month Notice. If, as in the present case, the tenant does

not make an application for dispute within fifteen days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, August 31, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: October 24, 2017

Residential Tenancy Branch