



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, MNDC, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order restricting the Landlord’s entry - Section 70;
3. A Monetary Order for compensation - Section 67; and
4. An Order for the Landlord’s compliance - Section 62.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to an order for the Landlord’s compliance?

Is the Tenant entitled to an order restricting the Landlord’s entry into the unit?

Is the Tenant entitled to the compensation claimed?

Background and Evidence

The tenancy, under written agreement, started on October 2011. Monthly rent of \$1,460.00 is payable. The tenancy agreement provides that rent is payable on the first day of each month. On October 13, 2017 the Landlord served the Tenant with a two

month notice to end tenancy for landlord's use (the "Notice") by registered mail. The Notice is dated October 12, 2017 and sets out an effective date of December 31, 2017. The reason set out on the Notice is that unit has been sold and the purchaser intends to occupy the unit.

The Tenant states that it also received two additional notices to end tenancy for landlord's use, one of which sets out that the Landlord intends to occupy the unit and the other is dated October 11, 2017. The Landlord states that there were errors on these notices and that there was never any intention for the Landlord to reside in the unit. The Tenant states that he informed the Landlord that the one notice indicated that the Landlord was to live in the unit and showed the Landlord the correct procedure.

The Landlord provides copies of the purchase and sale agreement setting out the conditions, dates for completion of the conditions and the possession date for the purchaser. The Landlord also provides a letter from the purchaser authorizing the Landlord to end the tenancy as the purchaser will be moving into the unit. The Tenant states that he has no evidence to dispute the authorization letter and no evidence to rebut the validity of the Notice.

The Tenant states that the Landlord verbally agreed to consult with the Tenant about the sale of the unit so that the Tenant could remain in the unit after the sale and that the Landlord would obtain the Tenant's consent for the sale. The Tenant states that the listing agent also made derogatory comments in the listing materials about the Tenant being a "tough tenant". The Tenant claims \$8,400.00 as compensation for the breaches of the Landlord's agreement and for the comments by the listing agent. The Landlord states that there was no agreement that the sale would be conditional on the Tenant's consent.

Analysis

Section 49(5) of the Act provides that 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 if, inter alia, 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.

Although the Landlord served the Tenant with a notice to end tenancy for landlord's use that does not contain the same reason as the Notice, given the Tenant's evidence that he corrected the Landlord on that notice I find that the Tenant knew it was made in error. I therefore find on a balance of probabilities that the prior notices were issued in error and do not indicate any bad faith on the part of the Landlord. Given the Landlord's supporting evidence of the sale and purchase of the unit with the authorization letter and considering there is no evidence to contradict any part of the sale and purchase or the authorization letter I find on a balance of probabilities that the Notice is valid for ending the tenancy. As a result I find that the Tenant is not entitled to a cancellation of the Notice and I dismiss that claim.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the finding that the Notice is valid, I find that the Landlord must be given an order of possession. As the tenancy has been ended and as the Tenant's claim for the Landlord's compliance and restricted entry are only relevant to an ongoing tenancy I dismiss these claims.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 6(1) of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The Tenant claims compensation in relation to acts by the listing agent however as this person is not a party to the tenancy agreement, I find that the Act does not apply to this situation. There is no evidence to support that the Landlord entered into a verbal agreement to obtain the Tenant's consent to sell the unit and the Landlord's evidence is that no such agreement was made. There is no clear written agreement on any consultation terms about the sale of the unit. As a result I find on a balance of probabilities that the Tenant has not substantiated that the Landlord breached any part of the tenancy agreement with the Tenant and I dismiss the claim for compensation. As none of the Tenant's claims have been successful, I decline to award recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: January 12, 2018

Residential Tenancy Branch