



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 November 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 served on the Applicant(s) by mailing, by registered mail to where the Tenants reside on November 24, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Respondent(s) by mailing, by registered mail to the address for service set out in the Notice to End Tenancy on December 15. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the Applicant(s) are entitled to an order cancelling the two month Notice to End Tenancy dated November 24, 2017?
- b. Whether the Applicant(s) are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on July 1, 2013. The present rent is \$1800 per month payable in advance on the first day of each month. The tenants did not pay a security deposit.

In September 2017 the landlord entered into a contract for purchase and sale of the rental unit and served a 2 month Notice to End Tenancy on the Tenants that provided that all condition 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 close family member intends in good faith to occupy the rental unit. The tenants disputed this Notice and in late October an arbitrator ordered that the Notice to End Tenancy be cancelled on the basis that the landlord failed to prove all of the conditions for sale had been satisfied at the time the Notice to End Tenancy had been served.

The sale of the property completed and it was transferred into the name of the purchasers on November 10, 2017.

The respondents served a 2 month Notice to End Tenancy dated November 24, 2017 on the Tenants by mailing, by registered mail to the Tenants which was received by the Tenants on November 27, 2017.

The Tenants dispute the 2 month Notice to End Tenancy on the basis that the respondent(s) have no standing to serve the Notice to End Tenancy as the respondents were not the owner of the property when the Notice to End Tenancy was served.

The respondents testified the purchaser served another 2 month Notice to End Tenancy on the Tenants at the end of December 2017 that set the end of tenancy for the end of February.

Grounds for Termination:

The Notice to End Tenancy dated November 24, 2017 relies on the following provision of section 49 of the Residential Tenancy Act:

- 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

Analysis:

Section 49(5) provides as follows:

49(5) 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.

Section 49 defines "landlord as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and

I accept the submission of the Applicants that the Respondents did not have the legal authority to serve the 2 month Notice to End Tenancy on November 24, 2017 as the property had already been transferred to the new purchaser. At that stage it was the obligation of the new purchasers to serve a Notice to End Tenancy as they had the reversionary interest in the property.

I have come to this conclusion even though the definition of "landlord" found in section 1 of the Act provides that "landlord includes former landlord when the context requires." The definition of landlord as set out in section 49 is the operative decision as this matter involves an application to cancel a Notice to End Tenancy give under section 49.

Further, the Respondent(s) failed to provide documentary evidence to prove the requirements of the section 49(5) have been made. I determined the provision of evidence at a former hearing is not sufficient.

Determination and Orders:

As a result I determined that the respondent(s) have failed to establish sufficient cause to end the tenancy. I ordered that the 2 month Notice to End Tenancy dated November 24, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the applicants have been successful in this application I ordered that the respondents pay to the applicants the sum of \$100 for the cost of the filing fee.

It is further Ordered that this sum be paid forthwith. The applicant(s) are given a formal Order in the above terms and the respondent(s) must be served with a copy of this Order as soon as possible.

Should the respondent(s) fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: January 23, 2018

Residential Tenancy Branch