



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL FF

Introduction

Both parties and counsel for the landlord attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated October 31, 2017 to be effective December 31, 2017 was served personally and the tenant's Application for Dispute Resolution dated November 14, 2017 was served by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49; and
- b) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need to end the tenancy in order to have the property for their own use? Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 1, 2014, it is now a month to month tenancy, rent is \$1500 a month and a security deposit of \$750 was paid. The landlord served a Notice to End Tenancy for the following reasons:

All the conditions for sale of the property have been satisfied and the purchaser has requested the landlord in writing to give notice to end the tenancy for the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord provided evidence that the property was sold June 25, 2017 with completion in April 2018. They provided evidence that the purchaser requested the landlord in writing to end the tenancy as purchaser or a close family member intended to occupy the rental unit.

The tenant said section 4 of the Act applied to this case. He rented the home with a garage and five acres where he operates his business of RV storage. He said the operation of his business was the main reason he occupied the home and leased it. He rents the garage to a third party and shares the proceeds 50% with the owner.

The landlord said section 4 does not apply as the house and land are under separate leases. The land is rented for \$5000 a month and they are bringing a separate Supreme Court action to regain possession of the land and will likely join the garage in that action as it is part of the commercial enterprise. The tenant did not deny that he has separate leases for the home and land but he contended the sale had not closed yet and the landlord had promised him a long term tenancy. His wife has health issues and his son goes to the nearby school.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

Section 4 of the Act states it does not apply to

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement.

I find the weight of the evidence is that the home and the land on which is the commercial business are rented under separate agreements. I find the home is rented for \$1500 a month and the land for \$5000 a month. Therefore, I find section 4 does not apply to this case.

Section 49 of the Act provides that a tenancy may end if *All the conditions for sale of the property have been satisfied and the purchaser has requested the landlord in writing to give notice to end the tenancy for the purchaser or a close family member intends in good faith to occupy the rental unit.*

I find the evidence is the property was sold in June 25, 2017, all of the conditions have been satisfied and possession is April 2018. I find the purchaser gave a letter to the

landlord requesting a notice to end tenancy be given to the tenant for the purchaser or a close family member intends to occupy the rental unit.

Therefore, I find the landlord legally ended the tenancy on December 31, 2017. For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy terminated on December 31, 2017 and an Order of Possession is issued effective two days from service.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed without recovery of the filing fee due to lack of success. The tenancy is at an end. An Order of Possession is issued to the landlord effective two days from service.

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: February 01, 2018

Residential Tenancy Branch