



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNSD, FFL

Introduction

This decision pertains to the Tenant's application for dispute resolution made on April 16, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks the following relief:

1. a cancellation of the Landlords' Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"); and,
2. a monetary order for costs of the filing fee, registered mail, and gas and parking for trips to the Residential Tenancy Branch.

The Tenant and Landlords attended the hearing before me, were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant testified that a copy of the Notice of Dispute Resolution Hearing package (the "Notice of Hearing") was served on each Landlord by way of registered mail on April 19, 2018. Copies of Canada Post registered mail tracking numbers were submitted into evidence. The Landlords confirmed receipt of the Notice of Hearing. Pursuant to section 90 of the Act, I find that each Landlord was deemed to have received the Notice of Hearing on April 24, 2018, the fifth day after they were mailed.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application will be considered in my decision.

Preliminary Issue – Late Submission of Evidence

The Tenant submitted into evidence a copy of a residential *Contract of Purchase and Sale* (the "Contract") on May 10, 2018, five days before the hearing. The Tenant testified that they received the Contract from the Landlords on May 8, 2018, and the Landlords confirmed having given them a copy of the document, and that they were

familiar with it. The Landlords agreed that the document, while submitted late by the Tenant, should be accepted, given that the document was only provided and made available to the Tenant on May 8, 2018. The Contract is dated January 27, 2018.

Having been satisfied that this new and relevant evidence was not available at the time the Tenant made their application, and having been satisfied that all parties have had an opportunity to review the evidence, I exercised my discretion under Rule 3.17 - *Consideration of new and relevant evidence*, and accepted the evidence.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Notice?
2. Is the Tenant entitled to a monetary order for costs of the filing fee, registered mail, and gas and parking for trips to the Residential Tenancy Branch?

Background and Evidence

The Landlord (B.M.) testified that they were the landlord and owner of a residential single-family house that was put up for sale in October 2017. The house has two rental suites in the lower level, one of which was the rental unit occupied by the Tenant. Shortly after the house was put on the market, and again in December 2017 and January 2018, B.M. had discussions with the Tenant about the potential sale of the house, and that they might have to eventually move out, depending on the purchaser.

In January 2018, B.M. found a purchaser—Landlord P.T.—and a conditional offer was made on the property, pending financing. P.T. advised B.M. that they intended to move their large family into the home, and wanted to have their elderly mother move into the rental unit currently occupied by the Tenant.

Included in the Contract evidence package are two *Contract of Purchase and Sale Addendum* documents, both dated January 30, 2018. The first *Contract of Purchase and Sale Addendum* (“Addendum 1”) is a single page. The second *Contract of Purchase and Sale Addendum* (“Addendum 2”) is two pages. Both parties referred me to the Contract evidence package submitted into evidence.

Addendum 1 includes the following paragraph:

The Buyer(s) and Seller(s) acknowledge that the tenants located at [rental unit address], BC in both 1 bed and 2 bed suites will be provided a notice to vacate

the premises by the current owners. The Buyer(s) intend to use and occupy this space by themselves and desire to end any pre-existing tenancies before they move in.

Addendum 2 includes the following term on page 2, and which appears after a list of repairs to be completed prior to sale:

1 and 2 Bedroom suite will be vacated prior to completion. Tenants Rights Apply in Accordance with the Tenancy Act.

P.T. eventually secured financing. B.M. issued the Notice on March 29, 2018, by serving the Tenant in-person on that date. B.M. also testified that they posted a copy of the Notice to the Tenant's door, before serving the Notice in-person. There was some disagreement between B.M. and the Tenant as to which door the Notice was posted, but both agreed that the Tenant received the Notice in-person on March 29, 2018, with an end of tenancy date of June 1, 2018. P.T. took possession on April 4, 2018.

P.T. testified that they have "a big family and need all of the house." Their mother is 73 years of age, uses a wheelchair, and will be moving into the the rental unit. P.T. further testified that, regarding accessibility (which the Tenant raised as an issue), the mother can enter through the home's main entrance, and then can access the suite from there.

The Tenant testified that they have been living in the rental unit for 13 years. There is no written tenancy agreement. The tenancy is month-to-month and rent is \$550.00 due on the fifth of the month. The Tenant paid a security deposit of \$250.00.

The Tenant testified that in early January 2018, B.M. tried to illegally increase the rent from \$550.00 to \$800.00. The Tenant submitted into evidence a copy of a letter, dated January 5, 2018, in which B.M. states that the tenancy would end if the Tenant refused to accept the increase in rent. The Tenant declined the rent increase and continued to pay the rent of \$550.00. The Tenant argued that the "excessive amount" of the rent increase was simply an excuse by B.M. to get the Tenant to move out. The Tenant also argued that B.M. attempted to increase the rent to increase the market value of the house.

Referring me to page 5 of the Contract, section 5, the Tenant pointed to the following sentence, which reads as follows:

Notice will be served to 2⁺¹ bedroom suite tenants to vacate suite upon subject

removal. Tenants rights apply.

The Tenant pointed out that the sentence had been typed in the Contract, but that the “+1”—handprinted as a superscript to the right of the “2”—had been added after the fact. They argued that while many other amendments and corrections had been made to the Contract, and that the seller’s and buyer’s initials were added to each amendment or correction, no initials appear next to the “+1”. The Tenant argued that what all of this implies is that the Landlord P.T. did not originally intend to evict them, but that at some point they changed their mind. The Tenant reiterated that everything that B.M. has done and said are “all fabricated lies.”

The Tenant testified that the tenants in the adjacent rental unit moved out a short while ago, and believed that new tenants have since moved in. Finally, the Tenant disagreed with P.T.’s opinion that the rental unit is accessible to a person in a wheelchair.

In rebuttal, Landlord P.T. clarified that a person in a wheelchair could, in fact, enter the rental unit through the home’s front entrance, that they want their mother to live with them, and that they intend to use the whole house for their large family in any event. They testified that some of their family is living in the adjacent rental unit and that renovation work is, or was, being undertaken.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 49 of the Act outlines the circumstances under which a landlord may end a tenancy for the landlord’s use of property. Section 49 (5), which applies to the present case, reads 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 will now review each subsection of section 49 (5) to determine whether the Landlord B.M. has met the requirements for ending the tenancy.

Regarding section 49 (5) (a) of the Act, the Landlord B.M. entered into an agreement with Landlord P.T. to sell the rental unit. This is substantiated by the testimony of all parties, and supported by documentary evidence of the Contract, Addendum 1, and Addendum 2. Whether B.M. entered into the agreement in “good faith” is what I must now consider.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. (See pages 1 and 2 of *Residential Policy Guideline 2. Good Faith Requirement when Ending a Tenancy*.) Moreover, a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice. A landlord’s intentions might be documented by, for example, a Notice to End Tenancy at another rental unit, or, an agreement for sale and the purchaser’s written request for the seller to issue a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice. The landlord must establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The Landlord P.T. testified that they always intended to have their elderly mother move into the rental unit. This is supported by the Contract, Addendum 1, and Addendum 2. In addition, P.T. testified that the adjacent rental unit’s occupants have vacated that unit. The Tenant confirmed that the tenants in that suite had vacated but was unable to provide any evidence that new tenants moved in. Further, while the Tenant testified that

Landlord B.M. was attempting to evict them through various means, such as the attempted rent increase, the Tenant provided insufficient evidence and no compelling argument that would give rise to the Landlord P.T.'s good faith intent to move their mother into the rental unit.

In respect of the issue of the attempted rent increase, whatever motive the Landlord B.M. had for so doing are moot. B.M. did not pursue the matter further and the Tenant continued to pay the rent of \$550.00. I also note that the letter regarding the proposed rent increase was dated January 5, 2018, three weeks before the Contract was finalized. I do not find that the issue of a proposed rent increase has any bearing on Landlord B.M.'s good faith in entering into the agreement with the buyer.

Taking into consideration all of the testimony and the documentary evidence, I find that the Landlord gave the Notice in good faith.

Regarding section 49 (5) (b) of the Act, the condition on which the sale depended was financing, as evidenced by the terms of the Contract. That condition was eventually satisfied, according to the testimonies of B.M. and P.T.

Regarding section 49 (5) (c) of the Act, the purchaser (P.T.) asked the seller (B.M.), by way of Addendum 1 to give notice to the Tenant because "The Buyer(s) intend to use and occupy this space by themselves." P.T. testified that they intended to use and occupy the rental unit, and that their mother—who falls within the definition of a "close family member" under section 49 (1) of the Act—will be moving into the rental unit. I find that, for the reasons provided by Landlord P.T. in their testimony and documentary evidence, P.T. intended in good faith to occupy the rental unit. Indeed, that some of P.T.'s family lives in the adjacent suite is consistent with P.T.'s intention to occupy the whole house.

I am not persuaded by the Tenant's argument that the inclusion of a handprinted "+1" to the Contract is evidence of malice or ulterior motive. Taking into account all of P.T.'s testimony, and the documentary evidence, I find that the inclusion of the "+1" was more likely a correction made to ensure an error-free Contract.

Therefore, taking into consideration all the evidence and testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have met the onus of proving the grounds on which the Notice was based.

As such, I dismiss the Tenant's application to cancel the Notice. The Notice, dated

March 29, 2018, and effective June 1, 2018, is upheld. Landlord P.T. is entitled to an order of possession effective June 2, 2018, pursuant to section 55 of the Act.

Further, as the Tenant has not been successful in their application to cancel the Notice, I dismiss the Tenant's application for a monetary order for costs.

Conclusion

I dismiss the Tenant's application to cancel the Notice. The Notice, dated March 29, 2018, and effective June 1, 2018, is upheld. Landlord P.T. is entitled to an order of possession effective June 2, 2018, pursuant to section 55 of the Act.

I dismiss the Tenant's application for a monetary order for costs.

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: May 22, 2018

Residential Tenancy Branch