



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on June 12, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the Notice).

One of the Tenants, R.G. attended the hearing. Both Landlords were present, as were two witnesses and family members. The Landlord also had their counsel attend. All parties provided affirmed testimony. Both sides were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Tenant stated that he received the Landlord's evidence on June 6, 2018, and he stated he did not have enough time to look through it because the Landlord served this evidence late. In consideration of this, I turn to the rules of procedure which state that the respondent (the Landlord), must serve their evidence to the Residential Tenancy Branch, and the application (the Tenant), and that this evidence must be received by the parties no later than 7 days prior to the hearing. Since the Landlord served their evidence late, and it did not afford the Tenant adequate time to review it, I will not consider it any further. The Landlord's documentary evidence is not admissible for this hearing.

The Landlord acknowledged getting the Tenant's evidence package and Notice of Hearing and did not take issue with the date it was served to them. During the hearing, and after going through the Tenant's evidence package, page-by-page, the Landlord

was able to confirm that they had the same package I had. Ultimately, I am satisfied the Tenant sufficiently served the Landlord with copies of his evidence within the required time limits. The Landlord stated that the copies of the documents were not easy to read, but I am satisfied they were sufficiently legible, as the Landlord was able to follow along and verify which papers were before them after I read to them, verbatim, what was contained in the copies I had.

At the start of the hearing, the Tenant sought an adjournment, in part, so that he could seek further material evidence for this hearing. The Landlord indicated that since they are in the process of selling the house, ending the tenancy is a time sensitive matter. The Landlord indicated that if the tenancy continues, then the current Landlord's will potentially be sued by the new owners, who want vacant possession of the unit. In consideration of this adjournment request, I turn to Policy Guideline #45, which states the following with respect to whether or not an adjournment will be granted:

4. Possible prejudice to each party

A party might be prejudiced if they are likely to suffer financial loss as a result of the requested delay, or if possession of the rental unit is at issue. In such cases, the possibility of prejudice to one party must be weighed against the fairness of the opportunity to be heard.

I find the potential prejudice to the Landlord (potential financial and legal risks) outweighs the Tenant's opportunity to be heard, and I dismiss the Tenant's request for an adjournment. Furthermore, I am mindful that the Tenant has already had almost two months since he filed this application in order to collect the necessary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on March 31, 2018. The Landlord issued the Notice for the following reason:

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 this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

In the hearing, the Landlord stated that they signed a contract of purchase and sale on March 15, 2018, to sell the unit. The Landlord stated that on March 23, 2018, they also signed an addendum (included in the Tenant's evidence) to the contract of purchase and sale, which specifies that the purchasers confirm that it is "agreed and understood that the sellers acceptance is irrevocable until after the date specified for the buyers to either: (a) fulfill or waive the terms and conditions herein contained; and/or (b) exercise any options herein contained." The addendum further states that the purchasers ask the sellers [current owners] to "give an eviction notice to the basement suite tenants so as to ensure that the tenant will move out and clean completely on or before the completion date." The addendum was signed by the sellers and the buyers and dated March 23, 2018.

The Landlord also stated that the current owners will be sued by the new owners if the Tenants don't move out by the completion date. The Landlord stated that they have no reason to doubt that the purchaser won't use the unit as they have said they would and they disagree with any allegation that they know, or are a party to any bad faith attempts to evict the Tenants.

The Tenant stated that he has asked the Landlords for further evidence to prove that the new owners are actually going to move into the rental unit. The Tenant stated that the addendum to the contract of purchase and sale does not sufficiently elaborate on what the new owners plan to do. The Tenant stated that the new owner's mother came by the house recently, and chatted with him, at which point they were told the new owners were going to chop up the basement into several different units to make more money from renting it out. The Tenant believes it is the new owner's intention to buy the property, evict him, put in several smaller units, and make more money. The Tenant stated that the Landlord has not met the burden of proof to show that the new purchasers will actually occupy the unit for the purpose they have stated. The Tenant stated that the Landlord is acting in bad faith, by providing false information about what the new owners will be doing with the unit.

The Tenant also stated that all conditions of the sale have not been removed and that the eviction is actually a condition of the sale. The Tenant feels the addendum "strongly implies" that the eviction is in fact a condition of sale, which is not allowable under the Act.

The Landlord stated that the information collected by the Tenant with respect to his conversations with the new owner's mother is hearsay, and is not reliable. The Landlord stated that until the completion date, they are still acting as the Landlords and under this authority, they have issued the Notice, as requested by the purchasers in the addendum.

Analysis

In the matter before me, once the Tenant alleges bad faith, the Landlord has the onus to prove that the reason in the Notice is valid and that they have an agreement in good faith to sell the rental unit.

Based on the evidence and testimony before me, I make the following findings:

Before a landlord can serve notice for the purchaser's use of the property, the landlord must have an agreement in good faith to sell the property, all conditions of the sale must have been satisfied and the purchaser must ask the landlord, in writing, to give notice to end the tenancy. This is clearly established under section 49(5) of the Act 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.

In this case, I note the Landlord has issued the Notice under section 49(5)(c). I am satisfied that the Landlord is in the process of selling the house, as evidenced by the testimony and the addendum to the contract of purchase and sale provided into evidence. However, I note the Landlord has not provided any admissible documentary evidence showing the particulars of the sale transaction, such as what conditions were on the sale, and when or if they have been satisfied. More specifically, I do not have the full contract of purchase and sale before me.

In the absence of further evidence, it is difficult to know if all of the conditions of the sale were satisfied, pursuant to section 49(5)(b) of the Act, and I do not find the Landlord has sufficiently demonstrated that all conditions of the sale have been met. The only piece of the contract of purchase and sale I have before me is the one page addendum to contract of purchase and sale. This addendum speaks to the buyer wanting vacant possession of the rental unit and a few other details. However, the lack of evidence surrounding whether all other conditions on the sale have been satisfied is detrimental. I do not find the Landlord has sufficiently demonstrated that all the conditions on which the sale depends have been satisfied, and the Landlord has failed to demonstrate that they have fulfilled the requirements under section 49(5)(b).

In this case, the onus is on the Landlord to substantiate the Notice, and I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy at this time; therefore, the Tenants' application is successful and the Notice received by the Tenant on March 31, 2018, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The Tenants' application is successful. The Notice is cancelled.

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: June 13, 2018

Residential Tenancy Branch