



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDY CREEK HOLDINGS (BERTRAM) LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 7, 2018 (the “Application”). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated May 28, 2018 (the “Notice”).

The Tenant appeared at the hearing with an advocate and temporary articling student (the “Articling Student”). Two representatives appeared for the Landlord including the Property Manager.

The Articling Student requested an adjournment of the hearing. She said she learned of further evidence that the Tenant wanted to present at the hearing three days prior to the hearing. She sought an adjournment to collect that evidence and present it at the hearing. She said it was not reasonable to expect that this would have been done by today. She confirmed the Tenant became aware of this evidence “a while ago”.

The Property Manager submitted that the Tenant had ample time to prepare for the hearing. She objected to an adjournment.

I considered the criteria for granting an adjournment set out in rule 7.9 of the Rules of Procedure. I declined to grant the Tenant an adjournment given the Tenant knew of the evidence “a while ago” and an adjournment would cause prejudice to the Landlord given this dispute involves the issue of an Order of Possession for the rental unit.

I proceeded with the hearing. I explained the hearing process to the parties who did not have questions when asked. The Tenant and both representatives for the Landlord provided affirmed testimony.

The Tenant had submitted evidence prior to the hearing. The Landlord had not submitted evidence. I addressed service of the hearing package and Tenant's evidence.

The Property Manager confirmed the Landlord received the hearing package. The Property Manager said she did not receive the Tenant's evidence. I pointed out that the only evidence submitted was a copy of the Notice and the tenancy agreement, both of which the Landlord should be aware of. The Property Manager agreed that there was no issue in this regard given the nature of the Tenant's evidence.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement. The agreement was between the Tenant and a different landlord originally but the Landlord purchased the property in 2017 and became the landlord. The tenancy started July 1, 2010 and is a month-to-month tenancy.

The Tenant submitted a copy of the Notice. It is addressed to the Tenant and refers to the rental unit. It is signed and dated May 28, 2018 by an agent for the Landlord. It has an effective date of July 31, 2018. The grounds for the Notice are that "[the] rental unit will be occupied by the landlord or the landlord's close family member".

The parties agreed the Notice was served on the Tenant personally on May 28, 2018.

The Tenant confirmed he filed the Application June 7, 2018 and the Property Manager took no issue with this.

In relation to the grounds for the Notice, the Property Manager testified that the Landlord wants to use the rental unit as an office. She said the Landlord offered the Tenant a unit in the main part of the building but he refused it.

The Articling Student submitted that the grounds noted in the Notice do not cover the purpose for which the Landlord wants the Tenant to vacate the unit. She submitted that the reason provided by the Landlord is not a valid reason to end the tenancy under the *Residential Tenancy Act* (the “*Act*”).

In reply, the Property Manager submitted that the stated purpose does qualify as “landlord’s use” of the property.

Analysis

A landlord can end a tenancy for landlord’s use of property under section 49 of the *Act*. A notice to end tenancy issued under section 49 of the *Act* must be issued for one of the reasons set out in that section.

Here, the reason for the Notice is “[the] rental unit will be occupied by the landlord or the landlord’s close family member”. The Notice was therefore issued under section 49(3) of the *Act* which states:

A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. (emphasis added)

The Tenant was permitted to dispute the Notice within 15 days of receiving it pursuant to section 49(8)(a) of the *Act*. There is no issue that the Tenant disputed the Notice within the time limit set out in the *Act*.

The Property Manager stated that the reason for the Notice is that the Landlord wants to use the rental unit for an office. The Landlord is not an individual, it is a company. The Landlord therefore is not permitted to end the tenancy pursuant to section 49(3) of the *Act* to use the rental unit as an office.

Given the Landlord is not permitted to end the tenancy under section 49(3) of the *Act* for the stated purpose, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 02, 2018

Residential Tenancy Branch