



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on December 3, 2018. The tenant seeks the following remedies:

1. an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), pursuant to section 49(8) of the Act; and,
2. an order for compensation for recovery of the filing fee, pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened on January 14, 2019, and the landlord and tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to a compensation for the filing fee?

Background and Evidence

The landlord testified that the tenancy started about five years. Monthly rent is \$764.00, originally \$735.00. The tenant paid a security deposit \$367.50 and a pet damage deposit of \$200.00. The tenancy is a month to month tenancy, and there was no copy of the written tenancy agreement submitted into evidence.

The landlord testified that that "I work full time job. At the end of July 2018, I lost my job. It was a high paying job." Finding himself unemployed, he decided that only way to pay the mortgage of \$3,140.00 was to sell house. He needed to downgrade. The house (which contains two side-by-side rental units) was put on the market on October 30, 2018. At end of November, he got an offer. The new buyer requires that the house be vacant. The possession date is February 2019.

The landlord issued the Notice on November 30, 2018 and served it in person on the tenant that same day. Page two of the Notice indicated that the reason for the tenancy ending was that "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." A copy of the Notice was submitted into evidence by the tenant.

The tenant testified that, "basically, the landlord has wanted the two suites vacant, so he can raise the rent." The house, according to the tenant, has remained for sale. Further, she submits that there is no evidence showing that the landlord had an accepted offer or what the subject to conditions are, including the requirement that the rental unit be vacant for the new owner.

The landlord stated that he could submit copies of his ROE and other documentation regarding the sale of the house if I wanted that evidence.

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 ground on which the Notice is based.

The Notice was issued under section 49(5) of the Act, which reads as follows:

- (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, the landlord had submitted no documentary evidence, such as written correspondence or documentation from the supposed purchaser wherein the purchaser states that they intend in good faith to occupy the rental unit. And, while the landlord stated that he could "send in" anything that I might want to look at in this regard, the onus and responsibility to provide evidence before the hearing falls on the landlord.

A respondent (as is the landlord in this case) is required under Rule 3.15 of the *Rules of Procedure*, under the Act, to serve a copy of any evidence that they wish to rely on to both the applicant and the Residential Tenancy Branch *not less than seven days before the hearing*. Submitted important documentary evidence, such as correspondence from the purchaser, after an arbitration is not accepted under the Rules of Procedure or the Act.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In

this case, I find that the landlord has failed to provide any evidence over and above his testimony proving that the purchaser has, in fact, requested that the rental unit be vacant when they take possession in February 2019.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the Notice was issued. As such, I order that the Notice, issued on November 30, 2018, is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

As the tenant was successful in her application, I award her compensation in the amount of \$100.00 for recovery of the filing fee. In full satisfaction of this award the tenant may withhold \$100.00 of the rent for February 2019.

Conclusion

I hereby order that the Notice, issued November 30, 2018, is hereby cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

I hereby order that the tenant may withhold \$100.00 of the rent for February 2019 in satisfaction of the monetary award granted.

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: January 14, 2019

Residential Tenancy Branch