



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE IN COMOX VALLEY
and [tenant name suppressed to protect privacy]

Dispute Codes

CNL

DECISION

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 13, 2018 ("Two Month Notice").

The Tenant and two agents for the Landlord, C.B. and J.M. (the "Agents") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; I 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.

I reviewed the service of the Two Month Notice and the Notice of Hearing and neither Party raised any concerns regarding the service of documentary evidence.

Issue(s) to be Decided

- Should the Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled?
- If so, should the Landlord get an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The Parties agreed that the Tenant had a verbal tenancy agreement with the Landlord starting in January 2016. The Tenant said that he went to arbitration in September 2018, when the Landlord “tried to kick me out for no reason at all.” The Agents said that after the Tenant was successful at arbitration, the owner of the rental unit hired the Agents’ firm to manage the property. The Tenant and the Landlord entered into a written tenancy agreement on October 1, 2018, with a monthly rent of \$800.00, and a security deposit of \$400.00.

In the hearing, the Tenant said that on December 13, 2018, the Landlord’s agent rang the doorbell and handed him the Two Month Notice; he said he remembered this, because his birthday was on the 12th. At the outset of the hearing, the Tenant said he was worried about finding a home, “so that’s what’s happening.” He said the Agents are trying to help him find another home, and he hopes they will give him a reference after the hearing to “back me up.” The Agents indicated that they would support the Tenant in providing him with an appropriate reference.

The Agents said the Two Month Notice was based on the rental unit having been sold unconditionally. The Agents submitted documentary evidence, which includes the purchaser’s intention to move into the rental unit. This documentary evidence is entitled: “Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession”. This document states that the buyers “intend in good faith to occupy the residential premises I am purchasing under the Contract of Purchase and Sale dated December 6, 2018.” This document, signed and witnessed on December 12, 2018, goes on to say:

All subjects have been removed, and I/we hereby request that you as landlord give the tenant(s) of the premises a notice under the *Residential Tenancy Act*, ending the tenancy and requiring the tenant(s) to vacate the premises by 1:00 PM February 28, 2018.”

This request is in accordance with Sections 49 and 37 of the *Residential Tenancy Act* of the Province of British Columbia.

Analysis

The standard of proof in a dispute resolution 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 the 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 this Notice is based.

Section 49 of the *Act* sets out the circumstances under which a landlord may end a tenancy for the landlord's use of the property. Section 49 (5), which applies to the case before me, 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 the case before me, I find that the Landlord entered into an unconditional agreement to sell the rental unit. This is substantiated by the testimony of all the Parties, and supported by the documentary evidence of the contract of sale dated December 13, 2018.

"Good faith" is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. This is set out in Policy Guideline 2, which also states that the *Act* allows a landlord to end a tenancy for "landlord's use of property", if the landlord:

- enters into an agreement to sell the rental unit, all conditions of the sale are satisfied and the purchaser asks the landlord, in writing, to end the tenancy because the purchaser or a close family member intends, in good faith, to move in;

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

In this case, the Landlord had an unconditional sales agreement with the purchaser when the Two Month Notice was served on the Tenant, as well as written confirmation that the purchaser intends to move into the property. The Tenant did not raise “good faith” as an issue in this matter. Based on the evidence before me, I find that the Landlord served the Two Month Notice on the Tenant in good faith.

Considering all the evidence before me, overall, as applied to the law, I find on a balance of probabilities that the Landlord has met the onus of proving the grounds on which the Two Month Notice was based. I dismiss the Tenant’s Application to cancel the Two Month Notice without leave to reapply. I find that the Two Month Notice complies with section 52 of the *Act*. The Two Month Notice dated December 13, 2018, and effective February 28, 2019 is upheld. I award the Landlord an order of possession effective February 28, 2019, pursuant to section 55 of the *Act*.

Conclusion

I dismiss the Tenant’s Application to cancel the Two Month Notice without leave to reapply. The Landlord is awarded an order of possession, effective two days after service on the Tenant, pursuant to section 55 of 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 *Residential Tenancy Act*.

Dated: February 28, 2019

Residential Tenancy Branch