



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on April 8, 2019 wherein the Tenants sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on March 26, 2019 (the "Notice") and to recover the filing fee.

The hearing was scheduled for 9:30 a.m. on May 24, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to cover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlord presented their evidence first.

The Landlord testified as follows.

The Landlord stated that he purchased the property in October of 2018. He confirmed that the subject tenancy was ongoing at that time. The Tenants pay monthly rent in the amount of \$950.00.

The Landlord stated that that rental property has sold. A copy of the Contract of Purchase and Sale, dated February 20, 2019, was provided in evidence and confirmed that the completion date for the sale is June 6, 2019 and the possession date is June 7, 2019. The buyer is an individual by the name of L.M.

Also introduced in evidence was a copy of a document titled "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession" in which L.M. asks for vacant possession of the rental unit and informs the seller/Landlord that she intends to occupy the property.

The Landlord confirmed that L.M. is aware that if she does not occupy the rental property as provided for in the Notice she would be liable for paying to the Tenants compensation equivalent to 12 months' rent.

The Landlord stated that he understood that the Tenants have alleged he did not issue the Notice in good faith. He stated that he initially wanted to renovate it and try to obtain a better sale price. He confirmed that to this end he entered into negotiations with the Tenants about ending their tenancy early so he could accomplish renovations and obtain a better sale price for the home in which the rental unit was located. He noted that this was prior to entering into the contract of purchase and sale with L.M. The Landlord confirmed that he intends to sell the property to L.M. and she has asked for vacant possession.

The Tenant, C.D., testified as follows.

She confirmed that she had reviewed the Contract of Purchase of Sale and the letter from the Seller. She stated that she did not believe that the contract was real as she believes the Landlord/Seller has grossly misrepresented the property on the Property Condition Disclosure Statement (the "PCDS") which forms part of the Contract of Purchase and Sale; in terms of the alleged misrepresentations she testified as follows:

- the Landlord/seller wrote that the dishwasher in the basement was built in, yet it is not, rather it is a portable dishwasher which the Tenants purchased;
- the Landlord has known about a leaking faucet in the rental unit since October 2018, yet he wrote on the PCDS that he was not aware of any issues with the water;
- the Landlord also wrote on the PCDS that he was not aware of any asbestos, yet the Tenants informed the Landlord that previous contractors informed them that the property has asbestos;
- the Tenants informed the Landlord about several structural issues, such as damp and rotting in the basement walls in the bedroom and cracks in the foundation in the master bedroom; yet again the Landlord writes on the PCDS that he is not aware of any such issues;
- the Landlord wrote on the PCDS that he was not aware of any moisture issues, yet there is mold and moisture in the carpet and mold in the spare bedroom, both of which were brought to the Landlord's attention. The Tenant also testified that the basement flooded during the tenancy.

The Tenant stated that based on the above, she questions whether this is in fact "a real deal".

In terms of her allegation that the Notice was issued in bad faith the Tenant noted the following:

1. The Landlord initially gave them a notice to end the tenancy on January 14, 2019, which was not valid, as it was just an email. At that time he said he wanted to reclaim the space, because he believed it was easier to sell if it was vacant.
2. During a previous residential tenancy branch hearing, on April 8, 2019, related to the upstairs tenancy, the Landlord stated that the house had not sold and there was only a *potential* buyer. C.D. was a witness in that proceeding and recalled that the Landlord said that he intended to renovate the basement suite. The Tenants also provided a statement from the Advocate at that hearing confirming that they also heard the Landlord say he intended to renovate the property.
3. In another email from the Landlord, dated January 30, 2019, he wrote "I highly suggest taking one of my offers because it is inevitable that either myself or the new buyer will be giving you a notice to vacate"

The Tenant also stated that she finds it odd that right after she agreed to be a witness at the upstairs' tenants hearing that the Landlord issued the Notice. She noted that the original hearing was on March 18, 2019 and was adjourned to April 8, 2019. She stated that when the Landlord found out that they were going to be witnesses for the upstairs' tenants hearing, he issued the Notice (March 26, 2019).

The parties confirmed their understanding that I was also the Arbitrator at the hearing for the upstairs tenants on March 18, 2019 and April 8, 2019.

In reply E.W. stated that the buyer had a full inspection and that all of the subject to's have been removed. E.W. stated that he saw L.M. as a "potential buyer" until the sale goes through, which is what he stated at the prior hearing with the other renter.

E.W. confirmed that he is an electrical contractor, not a realtor.

Analysis

After consideration of the testimony and evidence before me I find as follows.

Section 49 of the *Act* allows a Landlord to end a tenancy in the event the sale of the rental property, and reads as follows:

49 (1) In this section:

"**close family member**" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

...

"**landlord**" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and

...
"**purchaser**", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

...(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;

...

The Contract of Purchase and Sale introduced in evidence confirms that the Landlord has an accepted offer on the rental unit. The closing date for the sale is noted as June 6, 2019 and the occupation date is June 7, 2019.

As section 49 provides, the Landlord must enter into an agreement in *good faith* to sell the rental unit, and the purchaser must intend in *good faith* to occupy the rental unit. In the case before me the Tenants question the Landlord's good faith intentions. The Tenants did not dispute the purchaser's bone fide intention to purchase the property nor did they dispute the purchaser's intention to occupy the rental unit; there was no suggestion or evidence submitted by the Tenants that this was a non-arm's length transaction.

The Tenants allege the Landlord did not issue the Notice in good faith and question whether the contract of purchase and sale is "real". While the Tenant, C.D., disputes some of the information provided by the Landlord in the Property Condition Disclosure Statement this does not, in and of itself, prove the contract of purchase and sale is not valid.

The undisputed evidence is that the buyer has performed a home inspection and that she has communicated to the Landlord that she is satisfied with the condition of the property and wishes to proceed with the sale. Should a dispute arise between the Landlord/Seller and the Purchaser, with respect to the condition of the property and the information contained in the Property Condition Disclosure Statement, the remedy available to the Purchaser is to seek compensation from the Landlord for any proven losses; such disputes are outside the jurisdiction of the Residential Tenancy Branch.

Residential Tenancy Branch Policy Guideline 2 provides the following guidance with respect to the concept of good faith and reads in part as follows:

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 or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that 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 to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.

Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:

...

- *a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or*

...

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

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. demonstrate they do not have an ulterior motive for ending the tenancy.

The evidence confirms the Landlord attempted to negotiate with the Tenants to secure an end to their tenancy as he wished to sell the rental unit.

The Tenants allege that the Landlord gave inconsistent testimony at the hearing before me on May 24, 2019, and the prior hearing relating to the upstairs renters. As I informed the parties, I was the Arbitrator for both matters. The Landlords' testimony at the prior hearing was that he did not issue a notice to end tenancy for the lower unit *when he initially purchased the property* as he wished to continue with that tenancy. He further stated that it was his intention to reside in the upper unit of the rental property, renovate the unit while residing there, and sell the home after residing there for at least six months. In terms of the lower unit, the Landlord testified that he initially intended to sell the property with the tenancy intact. Although he did propose that the Tenants agree to a mutual agreement to end the tenancy, I find that he has consistently communicated his intention to sell the property. Although the Landlord may not have issued a notice to end tenancy when he first purchased the property in October of 2018, I find that his intention to reside in the upper unit for a period of time while renovating that unit, and then selling it after a period of six months, is consistent with his testimony during both hearings.

The Tenants question the timing of the Notice and allege the Landlord issued the Notice after they agreed to be witnesses in the prior hearing dealing with the upper rental unit.

The Landlord provided in evidence a letter from the buyer, L.M., dated March 14, 2019, confirming that she wishes to have vacant possession of the rental unit as she intends to occupy the rental unit.

I accept the Landlord's evidence that all the conditions of sale, known colloquially as the "subject to's", have been removed. The date for removal of the subject to's is noted as March 12, 2019 on the Contract of Purchase and Sale.

As sections 49(5)(b) and (c) provide, a Landlord cannot issue the 2 Month Notice until he receives *both* written notice from the purchaser that the purchaser, or a close family member, intends to reside in the property *and* the subjects to's have been satisfied. In this case, the Landlord was not able to issue the Notice until March 14, 2019 and did so on March 26, 2019. I am not satisfied this is evidence of bad faith on the Landlord's part.

In all the circumstances I am satisfied that the Landlord has entered into the contract of purchase and sale in good faith. There was no evidence before me which would support a finding that the Landlord issued the Notice for some ulterior motive. I am also satisfied that the conditions on which the sale depends have been satisfied. Finally, I am satisfied that the buyer, L.M., has asked

the Landlord in writing to give notice to end the tenancy as she intends, in good faith to occupy the rental unit. For these reasons I find the Notice is valid.

Conclusion

The Tenants' Application to cancel the Notice is dismissed. The tenancy shall end in accordance with the Notice. In furtherance of this the Landlord is granted an Order of Possession effective two days after service. This Order must be served on the Tenants and may be filed and enforced in the B.C. Supreme Court as an Order of that Court.

In the event the Tenants have paid rent for the month of June 2019, the Tenants are at liberty to apply for return of the rent paid for any days in which they are not in occupation of the rental unit in June of 2019.

Having been substantially successful I award the Landlord recovery of the \$100.00 filing fee. Pursuant to sections 38 and 72 of the *Residential Tenancy Act*, I authorize the Landlord to retain \$100.00 from the Tenants' security deposit; the balance of the security deposit shall be held in trust by the Landlord and dealt with 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 *Residential Tenancy Act*.

Dated: June 5, 2019

Residential Tenancy Branch