



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On October 2, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by registered mail on or around October 2019. The Landlord confirmed that he received this package and was able to listen to the audio evidence as well. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing and evidence package.

The Landlord advised that his evidence was served to the Tenant personally by the purchaser on or around the end of September 2019. However, the Tenant advised that he did not receive the evidence in this manner. He stated that the Landlord emailed this evidence instead. As the Tenant acknowledged receiving the Landlord's evidence, in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure for service of evidence, I am satisfied that the Tenant was served with the Landlord's evidence. This evidence was accepted and considered when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral

and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application 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 has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the Landlord purchased the tenanted rental unit on October 1, 2018 and inherited the tenancy that was already in place. Rent is established at \$1,200.00 per month and is due on the first day of each month. A security deposit of \$600.00 was also paid and a copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord advised that it was his belief that the Tenant was served the Notice by hand on September 27, 2019 by his employee, who was the tenant residing above the rental unit. The reason the Notice was served is because "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." The Tenant confirmed that he was served the

Notice by an employee of the Landlord on September 27, 2019 at approximately 7:00 PM. The effective end date of the tenancy was noted as December 1, 2019.

The Tenant advised that since October 2018, the Landlord has wanted the rental unit for the use of his employees, and he was served a Two Month Notice to End Tenancy for Landlord's Use of Property in May 2019. A Dispute Resolution proceeding was held, and this Notice was cancelled by the Arbitrator as the Landlord had provided contradictory testimony with respect to why the Notice was served. Subsequent to this decision, the Landlord sent an email to the Tenants stating that as a result of this decision, he was in financial difficulty and that "You really did fuck me with this situation and I really hope you're happy about it." In addition, the Tenants' internet service was reduced by the Landlord and he admitted to doing so when asked by the Tenants to rectify this. The Tenants referenced emails, submitted as documentary evidence, to support these allegations.

Furthermore, in August 2019, the Landlord started issuing ultimatum emails to the Tenants advising them that if they did not accept an offer and vacate the rental unit, he would sell the property to an employee and serve them with another Notice to end the tenancy. On September 26, 2019, the Tenants declined another ultimatum from the Landlord and were subsequently served the Notice on September 27, 2019 from an employee of the Landlord, who was the listed purchaser on the Notice. When the Tenant asked this employee when the sale was taking place, this person advised that it would be soon, but he was not sure when the documents would be signed. The Tenants referenced the audio recording with the employee, which confirmed that the Contract of Purchase and Sale (the "Contract") had not been signed yet, despite the Notice being served.

On October 2, 2019, the Tenant emailed the Landlord regarding the sale and the Landlord advised that the rental unit would be sold at the end of November 2019. The Tenants received an email from the Landlord with the Contract attached that was dated September 27, 2019; however, they knew it was not signed on this date based on their audio recording and from the Landlord's own comments. The Tenant referenced the condition noted in the Contract which required that the Notice be served prior to October 1, 2019. However, he cited Section 49(5)(b) of the *Act* which requires that "all of the conditions on which the sale depends have been satisfied" prior to issuance of the Notice. His position is that the *Act* requires the Notice to be served after the conditions of the sale are satisfied. Therefore, the Landlord could not have possibly complied with the legislation by serving the Notice when he did.

The Tenant stated that he received an email from the Landlord on November 6, 2019 and that the Landlord conveyed that he was instructed by his lawyers to wait on completing the sale of the house pending a decision on this matter. This is further evidence that the house is not sold yet.

Finally, the Tenant submitted that he is skeptical that the Contract is not legitimate as the Landlord is the broker listed on the Contract, that the company listed on the sale is the Landlord's company, and that the address he used for this company is his own personal address.

The Landlord advised that he decided to sell the rental unit and that his employee wanted the property for his mother-in-law. He stated that the mother-in-law currently lives with the employee and helps with his children; however, the employee wanted to purchase the property so that the mother-in-law would have her own separate space. The Landlord did not submit any evidence to support or corroborate these submissions. However, the Tenant did submit an email from the Landlord, sent September 27, 2019, which outlined the employee's request to the Landlord to serve the Notice as it was his intention to use the rental unit for his "families[sic] use". I find it important to note, though, that within this email is a date of September 29, 2019 that contradicts the Landlord's position that the purchaser had asked him in writing to serve the Notice on or around September 27, 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit being sold to a party where the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit.

In considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. The Landlord provided minimal testimony with respect to the reason the Notice was served. In addition, he submitted scant evidence to corroborate the reason on the Notice and it would not have

been difficult to obtain supporting documentation from the purchaser confirming his desire to use the property for his use or for the use of a close family member.

On the other hand, I have before me a copy of a previous Dispute Resolution decision, provided by the Tenants, dated July 5, 2019 where the Arbitrator determined that the Landlord had ulterior motives for serving the prior Notice (the relevant file numbers are listed on the first page of this decision). Furthermore, it was found that the Landlord was untruthful about his intention to move into the rental unit and was attempting to evict the Tenants illegally in order to have his employees move into the rental unit. I also have evidence from the Tenants outlining the Landlord's subsequent illegal reduction in the internet service provided as part of the tenancy, messages from the Landlord to the Tenants stating how it is his belief that they have caused him financial distress by successfully disputing the previous Notice, and multiple emails to the Tenants attempting to convince them to move in lieu of potentially being faced with another Notice to end their tenancy based on a sale of the rental unit.

When reviewing the totality of the Tenants' evidence, it is clear that the Landlord's actions demonstrate a history and pattern of behaviours consistent with being deceptive, untruthful, and vindictive. It is apparent that the Landlord is, more likely than not, attempting to end the tenancy for the use of his employees to benefit his business. As such, I find that the dubious nature exhibited by the Landlord causes me to attribute little weight or credibility to his testimony and evidence.

With respect to the reason on the Notice, I find that the undisputed content of the audio recording supports the Tenant's submissions that the sale of the rental unit had not been completed prior to service of the Notice. In addition, the Landlord's email containing the purchaser's request for the Landlord to serve the Notice contains a date of September 29, 2019, which is two days after the Notice was served. I find that these discrepancies cause me to doubt the legitimacy of the Landlord's testimony with respect to the reason on the Notice. In conjunction with my earlier findings on the Landlord's lack of credibility and honesty, these points lead me to be increasingly suspicious of the Landlord's intentions and doubtful that the rental unit was legitimately sold to another party.

Regardless, even if I were satisfied that the rental unit was sold and the purchaser had asked the Landlord to serve the Notice in good faith, I find it important to note that the Notice could only be served once the conditions of the sale were satisfied. As a condition of the sale, according to the Contract, was dependent on service of the Notice,

and as the Notice could not be served until the conditions of the sale were satisfied, it would not be possible to satisfy this condition of the sale while maintaining compliance with the *Act*. Ultimately, based on this fact alone, I am not satisfied that the conditions of the sale were satisfied, which would have permitted the Landlord to then serve the Notice when asked to by the purchaser. Therefore, I find that the Notice of September 27, 2019 is cancelled and of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of September 27, 2019 to be cancelled and of no force or effect. This tenancy continues 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 *Residential Tenancy Act*.

Dated: December 11, 2019

Residential Tenancy Branch