



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT

Introduction

In this dispute, the tenant sought to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Notice") pursuant to section 49 of the *Residential Tenancy Act* ("Act"), and, an extension of time pursuant to section 66 of the Act.

The tenant applied for dispute resolution on November 6, 2019 and a dispute resolution hearing was held December 23, 2019. The tenant, the landlord, and the landlord's real estate agent attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties. (The landlord corrected the spelling of his first name, which is now accurately recorded on this Decision and the corresponding Order.)

It should be noted that the Notice was served in-person on the tenant on October 26, 2019, and she applied for dispute resolution on November 6, 2019, which is within the 15-day application period permitted under the Act. As such, no extension of time under section 66 of the Act is therefore required. This aspect of the tenant's application is dismissed without leave to reapply, as it is a moot issue.

While I have reviewed evidence submitted that met the *Rules of Procedure*, under the Act, and to which I was referred, I have only considered evidence relevant to the issues of this application.

Finally, 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 cancellation of the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on July 1, 2019, and it is (according to the landlord) a month-to-month tenancy. Monthly rent is \$1,500.00 and the tenant paid a security deposit of \$750.00. No written tenancy agreement was submitted into evidence.

On October 26, 2019, the Notice was served in-person on the tenant. The Notice, a copy of which was submitted into evidence, indicated that the tenancy was ending on January 1, 2020, 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 landlord and his agent testified that the house – in which the rental unit is located – was listed for sale on the market in May 2019. A listing sign was on the front lawn since then. The landlord did not know how long the house would sit on the market, so he decided to rent it out until a new purchaser came along. He rented to the tenant, who was aware that the house was on the market.

The house was eventually sold in late September or early October 2019. The purchasers asked the landlord to ensure that the property would be vacant on or by January 15, 2020. A copy of the purchaser's *Tenant Occupant Property – Buyers Notice to Seller for Vacant Possession* (the "Buyer's Notice") was submitted into evidence.

The Buyer's Notice indicates that the buyers entered into a contract of purchase and sale on September 25, 2019, that all the conditions of the sale have been satisfied or waived, that the buyers request the seller landlord to give notice to end the tenancy to the tenant pursuant to section 49 of the Act, and, that the buyers intend in good faith to occupy the property.

The tenant testified that the landlord never told her she had only six months to live in the rental unit. She was aware that the property was up for sale and saw the listing sign. The raised an issue with respect to the addresses listed in the Notice but did not dispute that the buyers intended to take vacant possession.

To the point of requesting more time, the primary aspect of the tenant's testimony and submissions is that she is "looking for a new place" and that while she does want to vacate the rental unit, has simply not found suitable accommodation thus far. She asked that, if the Notice was upheld, she be given until the end of January 2020 in order to find a place. She is a single mother working full-time and she is desperately trying her best.

The landlord or his real estate agent acknowledged that the Buyer's Notice indicated a vacation possession time and date of January 15, 2010 at 1:00 PM, and that they were "O.K." with the tenant remaining in the rental unit until then.

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 notice to end the tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. In this case, the Notice was issued under section 49(5) of the Act which states:

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;

[. . .]

Here, the landlord issued the Notice for this reason. Moreover, the Buyer's Notice indicated that the purchaser intends in good faith to occupy the rental unit. While the tenant raised an issue with respect to the address of the landlord, and the address of the purchaser, this in and of itself (and considering an absence of any other evidence to indicate otherwise) does not raise an issue of a lack of good faith on the part of the buyer. There was no evidence to suggest that the buyer does not intend, in good faith, to occupy the rental unit.

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 met the onus of proving the basis on which the Notice was issued.

As such, I dismiss the tenant's application for an order cancelling the Notice without leave to reapply. The Notice is thus upheld.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their application is dismissed, or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

Section 49(7) of the Act requires that "A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice."

In this dispute, I find that the Notice complied with section 52 of the Act, and it contains the name and address of the purchaser who asked the landlord to give the Notice.

Having found that the Notice complies with section 52 of the Act I therefore grant the landlord an order of possession.

Further, having taken into consideration the tenant's needs in terms of finding a new place to live, and taking into account the landlord's accepting of the effective date to be January 15, 2020, I have issued an order of possession which reflects a vacate date of January 15, 2010.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenant and is effective on January 15, 2020 at 1:00 PM. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

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: December 23, 2019

Residential Tenancy Branch