



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDCT MNRT OLC RP RR

Introduction

This hearing was scheduled to deal with the tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 30, 2019, and several other remedies.

One of the named tenants appeared along with legal counsel. The landlord appeared along with his son who has been acting as the property manager, legal counsel and two witnesses. The witnesses were excluded with instruction to wait until called. It was unnecessary to call the witnesses during the remainder of the hearing.

At the outset of the hearing I confirmed that the parties were in receipt of the other party's hearing documents and evidence. Accordingly, the documents were admitted into evidence.

The tenant identified several matters in filing this Application for Dispute Resolution. The confirmed that he continues to occupy the rental unit and seeks to continue the tenancy. As such, I determined it necessary and appropriate to proceed to resolve the dispute concerning the 2 Month Notice and I severed the other remedies sought by the tenant pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a

party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

The parties were affirmed, and the hearing process was explained to the parties. The parties were permitted the opportunity to ask questions about the process.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 30, 2019 be upheld or cancelled?

Background and Evidence

The tenant and the former owner of the property entered into a tenancy that started in June 2012. The current landlord purchased the property in 2015.

Both parties provided consistent testimony that the monthly rent was originally set at \$1,250.00 payable on the first day of every month and the tenant paid a security deposit of \$625.00. The landlord testified that the monthly rent was reduced to \$1,050.00 starting August 2019. The tenant's lawyer submitted the monthly rent was reduced to \$1,050.00 pursuant to a dispute resolution proceeding decision issued in August 2016.

The landlord issued the subject 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") on November 30, 2019. The landlord testified that his son, the property manager, put the 2 Month Notice in the tenant's mailbox on November 30, 2019. The tenant confirmed finding the 2 Month Notice in the mailbox on December 2, 2019. The tenant filed to dispute the 2 Month Notice on December 13, 2019 which is within the time limit for disputing a 2 Month Notice.

The 2 Month Notice has a stated effective date of January 31, 2020 and indicates the following reason for ending the tenancy:

"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."

Landlord's position

The landlord submitted that on November 20, 2019 he entered into a Contract of Purchase and Sale ("sales contract") to sell the property on February 15, 2020 and the sales contract became unconditional on November 29, 2019.

The landlord submitted that the purchaser requested the landlord to give the tenant notice to end the tenancy on November 20, 2019 by way of the sales contract. The landlord pointed to two terms in the sales contract as the basis for this position:

On page 2 of the contract, under term 3 is the following:

Buyer(s) and Seller(s) agree that House will be vacant possession to the buyer on the day of possession date.

On page 3 of the contract, term 5 provides:

5. **POSSESSION:** The Buyer will have vacant possession of the Property at 11:59 Pm m. on February 15, yr. 2020 (Possession Date) OR, subject to the following existing tenancies, if any:
Vacant Possession

I asked the landlord whether there was any other written request for possession of the rental unit given to him by the purchaser and the landlord confirmed that the only written request for possession of the unit came by way the terms in the sales contract described above.

The landlord did state that despite the term 5 of the sales contract, the possession date may be extended to February 26, 2020 and the landlord would be satisfied with an Order of Possession with an effective date of February 26, 2020.

The landlord attempted to raise an issue with respect to unpaid rent. I did not permit the landlord to do so as the purpose of this proceeding is to make a determination on the validity of the 2 Month Notice. The tenant also tried to respond to the landlord's claims of unpaid rent, and I did not permit him to do so. Rather, the parties were informed that if there is a dispute concerning payment or non-payment of rent the parties are at liberty to seek the appropriate remedy provided under the Act.

Tenant's position

The tenant submitted that this is the sixth eviction notice he has received from the landlord and that the five previous notices to end tenancy were cancelled. The tenant was of the position that the sales contract was a “fake” contract. The tenant pointed out that on page 1 of the sales contract the name of a realtor and brokerage firm are identified as having prepared the contract; yet, the tenant went to the named brokerage and determined that there is no such realtor affiliated with that brokerage and the brokerage had no record of that sales contract. The tenant stated that the manager of the brokerage may be called to testify.

The tenant's legal counsel argued the landlord has the burden to prove the sales contract and 2 Month Notice are genuine. The tenant's counsel made arguments the landlord is not acting in good faith; the landlord is not credible given facts revealed in previous dispute resolution proceedings; and, the sales contract is not a bona fide sale/purchase agreement, pointing to the following factors:

- The contract is not witnessed;
- There are no conveyancers appointed; and,
- Vacant possession is to be provided despite the property being tenanted.

In addition, the tenant's counsel pointed out that the effective date of the 2 Month Notice is incorrect since it was received by the tenant in December 2019 and there is no written request from the purchaser to end the tenancy because the purchaser or close family member of the purchaser intend to occupy the rental unit.

Although the tenant's counsel indicated she had other arguments to make with respect to the validity of the 2 Month Notice, I instructed her to cease as I was satisfied the 2 Month Notice should be cancelled based on the undisputed fact that the landlord had not received a written request from the purchaser to issue a notice to end tenancy to the tenant because the purchaser or close family member of the purchaser intend in good faith to occupy the rental unit. It was also unnecessary to hear the landlord's responses to the other arguments put forth by the tenant and the tenant's counsel concerning the 2 Month Notice.

Having informed the landlord that I was cancelling the 2 Month Notice, the landlord confirmed that the sales contract will collapse. Accordingly, it appears the landlord shall remain the same for the time being.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

The reason for ending the tenancy that is provided on the notice to end tenancy served to the tenant in this case is provided under section 49(5) of the Act. Section 49(5) provides that a landlord may end a tenancy where all of the following criteria are met:

- (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.

[My emphasis underlined]

As I informed the parties during the hearing, a term in a Contract of Purchase and Sale that provides for vacant possession upon completion of the contract is not in itself sufficient grounds for a landlord to issue a 2 Month Notice under section 49(5) of the Act. "Vacant possession" is something that the landlord does not have to give the purchaser when a property is tenanted unless the tenancy is already set to end by another means under the Act. Also, the purchaser's requirement to receive "vacant possession" does not convey that the purchaser or close family member intends to occupy the rental unit. Rather, to succeed in ending the tenancy under section 49(5) I must be satisfied that after a bona fide sales contract, that was entered into in good faith, becomes unconditional the purchaser requested of the landlord, in writing, that the landlord give a notice to end tenancy to the tenant because the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit. In this case, the landlord submitted that the sales contract became unconditional on November

29, 2019 but there is no written request from the purchaser dated November 29, 2019 or later for the landlord to issue a notice to end tenancy to the tenant because the purchaser, or close family member of the purchaser, intends in good faith to occupy the rental. As such, I find the requirement of section 49(5)(c) has not been satisfied and the landlord did not have a basis to issue the 2 Month Notice that is before me. Therefore, I grant the tenant's request for cancellation of the 2 Month Notice dated November 30, 2019 and the tenancy continues at this time.

Having found the 2 Month Notice was issued in the absence of a written notice that complies with section 49(5)(c) it is unnecessary for me to make a determination as to whether the Contract of Purchase and Sale was a bona fide contract or entered into in good faith and I make no such findings.

Conclusion

The 2 Month Notice dated November 30, 2019 is cancelled and the tenancy continues at this time.

The other remedies sought by the tenant in his Application for Dispute Resolution are severed and dismissed with leave to reapply.

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 12, 2020

Residential Tenancy Branch