



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNL FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants initially filed this application naming the purchaser of the property as the respondent. The tenants subsequently amended the application to also name the landlord as a respondent.

The tenants attended the hearing. The landlord's agents attended the hearing on behalf of the landlord and acknowledged service of the tenants' application.

The purchaser did not attend this hearing, although I waited until 11:30 a.m. in order to enable the purchaser to connect with this teleconference hearing scheduled for 11:00 a.m.

The tenants testified that on January 4, 2012, they sent a copy of the Application for Dispute Resolution and Notice of Hearing to the purchaser by registered mail. A registered mail receipt and tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the respondent purchaser was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the purchaser.

The tenants application was filed within the time period required under the Act.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord and/or the purchaser?

Background and Evidence

The landlord served the tenant with the Two Month Notice on December 17, 2019. The Two Month Notice was issued on the following grounds that the landlord entered into an agreement in good faith to sell the unit; all the conditions of the sale have been satisfied; and, the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit. The effective date of the Two Month Notice was February 28, 2020.

There was no dispute that the property had been sold, the possession date for which was upcoming on March 13, 2020. There was also no dispute that the conditions for the sale had been satisfied and that the purchaser had requesting in writing to the landlord to issue the Notice to End Tenancy on the ground that the purchaser, or a close family member of the purchaser, intended in good faith to occupy the rental unit.

The landlord's agents submit the Two Month Notice was issued at the request of the purchaser.

The tenants submit that the purchaser is a wealthy property developer who has no intention to occupy the unit himself or for his family. The tenants argue that the purchaser also purchased a property next door which was vacant at the time of purchase and has since been rented. The tenants submit e-mail correspondence from the purchaser in which he acknowledges that he does not intend to occupy the unit but rather plans to eventually demolish the house.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy.

Specifically, section 49(5) of the Act provides as follows:

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.*

Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

The purchaser did not participate in the hearing and as such has failed to provide sufficient evidence to justify grounds for which he requested the landlord issue the Two Month Notice on his behalf. Accordingly, the Two Month Notice dated December 17, 2019, is hereby cancelled and of no force or 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 from the purchaser only. I make this finding as the landlord did not contravene the Act by issuing the Two Month Notice at the request of the purchaser.

The tenants are provided a monetary order in the amount of \$100.00. If and when the purchaser takes possession of the rental unit and becomes the new landlord of the tenants, the tenants may reduce a future rent payment to satisfy this award if it is not satisfied by the purchaser before that.

Conclusion

I allow the tenants application to cancel the landlord's Two Month Notice, dated December 17, 2019, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$100.00. Should the respondent purchaser fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 02, 2020

Residential Tenancy Branch