



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

In this dispute, the tenants sought to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") under section 49 of the *Residential Tenancy Act* (the "Act").

The tenants applied for dispute resolution on April 12, 2020. A dispute resolution hearing was held, by way of telephone conference, on June 1, 2020 at 9:30 AM, and only the landlord attended. He was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlord provided a corrected version of his first name, which is reflected on the cover page of this Decision.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was 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. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord testified that he issued the Notice, a copy of which was submitted into evidence, on March 24, 2020, and served it on the tenants by way of Canada Post registered mail. A copy of a Proof of Service document was submitted into evidence.

The Notice, which is signed by the landlord, indicated that the tenancy would end on May 1, 2020. On page two of the Notice, it indicated that the tenancy was ending 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.”

Also included with the copy of the Notice was a copy of a completed and signed document entitled “TENANT OCCUPIED PROPERTY - BUYERS NOTICE TO SELLER FOR VACANT POSSESSION.”

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 tenancy, the onus is on the landlord to prove, on a balance of probabilities, the ground(s) on which the Notice is based.

A landlord may end a tenancy by giving notice under section 49(5)(c), which is where a buyer asks the seller (the landlord) to end the tenancy so that the buyer can occupy the rental unit. This is the reason indicated on page two of the Notice.

The tenants disputed the Notice under section 49(8) of the Act and did so within the deadline of 15 days of receiving the Notice.

Section 55(1) of the Act states that

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this dispute, the tenants failed to attend the hearing to rebut the landlord's evidence as to why he issued the Notice. As such, I dismiss the tenants' application, and I uphold the landlord's Notice. Further, having reviewed the Notice, I conclude that the Notice complies with section 52 of the Act. Therefore, having dismissed the tenants' application, I grant the landlord an order of possession.

Conclusion

I dismiss the tenants' application without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenants and is effective two days from the date of service. Should the tenants fail to comply with the order, the landlord may file and enforce the order in the Supreme Court of British Columbia (subject to the restrictions noted on the Order of Possession).

This decision is final and binding, except where permitted by law, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 1, 2020

Residential Tenancy Branch