



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Respondent SK were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the hearing Respondent SK gave evidence that the unit has been sold and that it no longer considers itself a landlord in these proceedings. Respondent SK then disconnected from the hearing. Persons GM and HM appeared at the hearing as the purchasers of the unit. The Tenant confirms that the purchasers were given notification of the application for dispute resolution and notice of hearing and were asked to attend this hearing. The Parties each state that there has been some confusion with the notice to end tenancy given the state of emergency. The Tenant seeks to add the purchasers of the unit as Respondents to the application. The purchasers agreed to be added as Respondents.

Rule 7.12 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) provides that in exceptional circumstances a party may make an oral request at the hearing to add another party. Given the confusion caused by the state of emergency and the consent of both purchasers GM and HM I consider that exceptional circumstances exist, and I add them to the application as additional Respondents hereinafter referred to as

the “Purchasers”. The Purchasers were given full opportunity under oath to be heard, to present evidence and to make submissions

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement of a lower unit in a house started on July 8, 2019. Rent of \$1,300.00 is payable on the 8th day of each month. The Purchasers are holding a security deposit of \$650.00 and a pet deposit of \$300.00. On July 7, 2020 the Tenant received a two month notice to end tenancy for landlord’s use (the “Notice”). The effective date of the Notice is September 8, 2020. The reason stated on the Notice is that 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 of that person intends in good faith to occupy the rental unit. The Purchasers have moved into the upper unit of the house.

The Tenant states that the correct effective date of the Notice should be September 30, 2020. The Tenant states that it has no evidence that the purchasers do not have a good faith intention to occupy the unit. The Purchasers state that the sale has closed and that they intend to occupy the lower unit after the end of the tenancy as stated in the letter dated June 26, 2020 that was given to Respondent SK.

Analysis

Section 49(5) of the Act provides that 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.

Section 49(2)(a) of the Act provides that a landlord may end a tenancy for a purpose referred to in subsection (5) above by giving notice to end the tenancy effective on a date that must be

- (i)not earlier than 2 months after the date the tenant receives the notice,
- (ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Based on the Tenant's undisputed evidence of the receipt of the Notice and the date of rent payable I find that the Notice does not set out an incorrect effective date. Given the agreed facts that the Purchasers have moved into the upper unit of the house and as there is no evidence of bad faith on the part of the Purchasers to occupy the lower rental unit, I find that the Notice is valid. The Tenant's claim to cancel the Notice is dismissed. As this claim was not successful, I also dismiss the claim for recovery of the filing fee and in effect the application is dismissed in its entirety.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,

- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

As the Tenant's application has been dismissed and as the Notice complies with the Act, I find that the Purchasers are entitled to an order of possession for the effective date of the Notice.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Purchasers effective 1:00 p.m. on September 8, 2020. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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 Act.

Dated: August 17, 2020

Residential Tenancy Branch