



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, LRE, LAT, CNL, FF

Introduction

This hearing was convened in response to two applications filed by tenants seeking orders as follows:

1. To Cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, (the Notice), issued on July 21, 2020;
2. To have the landlord make repairs to the unit;
3. To suspend or set conditions on the landlord's right to enter the rental unit;
4. ~~For a monetary order for unpaid rent;~~
5. To be allowed to change the locks to the rental unit; and
6. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants' request to set aside the Notice to End Tenancy. The balance of the tenants' application is dismissed with leave to reapply, if I should order the tenancy to continue.

Background and Evidence

The tenancy began on April 1, 2009. Current rent in the amount of \$1,496.59 was payable on the first of each month. The tenants paid a security deposit of \$700.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on September 30, 2020.

The reason stated in the Notice was that:

- All 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's agent testified that the landlord received an offer by the purchaser on July 8, 2020, and that offer was accepted on July 10, 2020. Filed in evidence is a copy of the contract to purchase.

The landlord's agent testified that the on July 15, 2020, the purchaser removed the conditions and requested the landlord give notice to end the tenancy for the above stated reason. Filed in evidence is an addendum to the contract to purchase.

The landlord's agent testified that they have no ability to give the tenant more time to vacate as the contract for purchase closes on October 7, 2020.

The landlord's agent testified that the contract for purchase has been confirmed by their solicitor as they have provided a letter regarding the sale of the property. Filed in evidence is copy of a letter dated August 11, 2020, from a law firm, which is signed and dated.

The tenant testified that they have a friend who is real estate agent and the property was not listed on MLS; however, they did find that the landlord had tried to sell the property in 2019. The tenant stated that real estate agent was able to find a copy of the contract to purchase that is subject to this hearing; however, that was removed from the site. The tenant stated that they believe the contract to purchase was cancelled.

The article student (the "AS") for the tenant stated that they do not believe the notice was issued in good faith for the following reasons.

The AS stated that the landlords have made multiple attempts to end the tenancy and they do not want to make repairs to the premise.

The AS stated that they have provided a copy of the land title document for the subject property and there is no pending transfer noted on the document.

I asked the AS student if that is a mandatory requirement, which they responded that they do not know.

The AS stated that if the offer was presented on July 8, 2020, it would not be reasonable for the landlords to have scheduled an open house for July 9, and 10.

The AS stated that the landlord was also sending the tenant demands letters in July to remove garbage and a car from the property and there were threats if this was not complied they would end the tenancy.

The AS confirmed they have received the letter from the landlords' legal counsel who is handling the sale of the property. The AS confirmed they made no attempt to contact legal counsel named in the letter.

The landlord's agent responded they since the tenancy started in 2009, they have only issued one notice to end the tenancy, not multiple and they were successful with obtaining an order of possession, which was overturned on judicial review. The agent stated there are no orders made against them to complete repairs.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I am not satisfied that simply because the property was not listed on MLS website, supports that the property was not for sale. Private sales are not uncommon, and it is up to the owner to determine how they want to sell their property. Further, I am not satisfied that simply because a contract to purchase was removed from an online site, proves the contract to purchase was cancelled.

I am not satisfied that simply because an offer to purchase the subject property was dated on July 8, 2020, took away the owners right to continue to show the premise on subsequent days. The offer was not accepted by the seller until July 10, 2020 and conditions of sale were removed on July 15, 2020, with a closing date of October 7, 2020.

I am not satisfied that there is any requirement that a property that is subject to a contract to purchase with a closing date of October 7, 2020, must be registered with

land titles as pending transfer. Although the AS presented this argument they did not know if it was even a mandatory requirement. Therefore, I can put no weight on this argument.

In this case, the landlord's have filed a copy of the contract to purchase the subject property, with an addendum that the buyer requests that the landlords give notice to end the tenancy as the purchaser or close family member plans to occupy the premise. There is no evidence before me that supports that these documents are falsified, which would be a very serious matter or that this agreement was cancelled.

The AS and the tenant had a copy of the letter from legal counsel that is handling the documents for the sale of the property. The letter gives the contact information of counsel. The AS or the tenant could have contacted the number listed in the letter to ensure the accuracy of the document and the contract of sale. However, neither party did so.

Based on the above, I find I must accept the contract to purchase the subject property, as genuine.

I accept there were some issues during the tenancy and the tenant was given demand letters to remove items from the property; however, those do not support bad faith as the landlords are entitled to give tenants warning for such things under the Act.

I am not satisfied that simply because there has been one prior notice to end tenancy over the course of the tenancy, supports bad faith. The notice to end the tenancy was based on late payments of rent. The landlord was successful with obtaining an order of possession, which was later overturned on a judicial review.

I am not satisfied that simply because the tenant has requested repairs, supports bad faith. There are no orders against the landlord to make any repairs to the rental unit.

I am not satisfied based on the testimony that the landlords have an ulterior motive to end the tenancy, such as to increase the rent.

Further, this simply is the sale of the subject property, it is not the landlord who intends to occupy the premise. It was the purchaser that has requested that the Notice be given. There was no evidence before me to suggest that the purchaser does not intend to occupy the premise in good faith.

In light of the above, I find the Notice is valid and remains in full force and effect. I find the tenancy will legally end on **September 30, 2020**, in accordance with the Act. Therefore, I dismiss the tenants' application without leave to reapply. As the tenants were not successful with their application, I decline to award the tenants the cost of the filing fees.

Since I have dismissed the tenants' application, I find that the landlords are entitled to an order of possession effective **September 30, 2020, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court.

As the tenants were not successful with their application, I decline to award the tenants the cost of the filing fees.

Conclusion

The tenants' application to cancel the Notice is dismissed. The landlords are granted an order of possession. I decline to award the cost of the filing fee as the tenants' application was not successful.

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: August 28, 2020

Residential Tenancy Branch

This decision is amended pursuant to Section 78(1) of the Residential Tenancy Act this 9th day of September, 2020.