



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On July 31, 2020, the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property.

The matter was set as a teleconference hearing. The Tenant and Landlord attended the hearing. The Landlord is the purchaser of the residential property. The Landlord who issued the Two Month Notice did not attend the hearing. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

The respondent Landlords never provided any documentary evidence in response to the Tenant's application and evidence. The purchasing Landlord confirmed she received disclosure of the Tenant's documentary evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Is the tenancy ending based on the Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The Landlord and Tenant provided testimony agreeing that the tenancy began in September of 2011 or 2012. Rent in the amount of \$744.05 is to be paid to the Landlord by the first day of each month.

The Landlord issued the Tenant a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 21, 2020 ("the Two Month Notice"). The reason for ending the tenancy within the Notice is:

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.

The Two Month Notice provides the name and address of the purchaser. The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is October 1, 2020.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the notice within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. The Tenant disputed the Two Month Notice on July 31, 2020, within the required time period.

The purchasing Landlord testified that all of the conditions for sale of the property have been satisfied and she intends to move into the rental unit. She testified that she will not be closing the sale agreement if she does not have vacant possession of the residential property.

In response, the Tenant submitted that she wants the Two Month Notice to be dismissed. She testified that the selling Landlord and the purchasing Landlord are in a relationship and they are transferring title of the property so that they can evict her and rent the unit for a profit. She testified that the purchaser and seller live together.

The Tenant testified that the Landlord previously tried to evict her for false reasons. The Tenant provided a copy of a Dispute Resolution Decision involving the parties dated May 12, 2020 where an Arbitrator found that the Landlord failed to demonstrate that the Landlord truly intended to occupy the rental unit for 6 months. The Two Month Notice was cancelled.

The Tenant testified that the Landlord could move into the other side of the duplex which is vacant. She submitted that the Landlord offered compensation to a previous Tenant of the duplex if she was able to get rid of her.

The Tenant provide a copy of a contract of purchase and sale dated July 8, 2020 for the residential property for the sale to be completed on October 5, 2020. The contract provides it is subject to the following conditions:

- Subject to a new mortgage being made available to the buyer.
- Subject to the buyer receiving and being satisfied with insurance from a provide of their choice on or before July 23, 2020.

In reply, the purchasing Landlord testified that she is not in a relationship with Mr. C.F. She testified that Mr. C.F. is her roommate and that she intends to occupy the purchased property/ unit without Mr. C.F.

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;*

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

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

The owner did not attend the hearing. The purchasing Landlord testified that she will not be closing the deal unless she has vacant possession of the property. I find that part 5 of the sale agreement provides that the buyer will have vacant possession of the property on October 5, 2020. However; I find that sale agreement does not contain a subject to condition regarding vacant possession.

I find that the section 49(5)(c) of the Act requires that the purchaser asks the Landlord, in writing, to give notice to end the tenancy, if the purchaser intends in good faith to occupy the rental unit. The Two Month Notice indicates that this is the case. However, there is no documentary evidence before me to prove that the owner received a written request from the purchaser asking him to issue the notice to end tenancy. The owner who issued the Two Month Notice was not in attendance to provide testimony. The respondent Landlords did not provide any documentary evidence.

I have also considered that the selling Landlord attempted to end this tenancy of this Tenant a couple months earlier and was not successful as his good faith intention was called into question.

The Two Month Notice cites that all the conditions of sale have been satisfied; however; the purchasing Landlord stated that she may not close the deal. This statement appears to be at odds with the contract of sale. This statement along with my finding of insufficient evidence that the owner received proper written notice from the purchaser to issue the Two Month Notice, leads me to find that the Two Month Notice was not issued correctly, and it also causes me to question whether the purchasing Landlord intends to complete the purchase and live in the residential property.

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 21, 2020, is successful.

The tenancy will continue until ended in accordance with the Act.

Conclusion

I find there is insufficient evidence that the property owner received proper written notice from the purchaser to issue the notice to end the tenancy, for the purchasers intention to occupy the rental unit. In addition, the completion of the sale appears to remain conditional as the purchaser indicated she may not close the deal.

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 21, 2020 is successful. The Two Month Notice is cancelled.

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: September 14, 2020

Residential Tenancy Branch