



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNL-MT

Introduction

The tenants have applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the *Residential Tenancy Act* ("Act"). Both parties (one of the tenants) attended the hearing on January 8, 2021, held by teleconference.

The landlord stated that she had not received the Notice of Dispute Resolution Proceeding from the tenant and has not received any documentary evidence from the tenant. She only found out about the hearing as a result of a text conversation she had with the tenant. The tenant acknowledged and confirmed that she failed to serve the landlord with the Notice of Dispute Resolution Proceeding.

While the tenant failed to serve the landlord with a copy of the Notice of Dispute Resolution Proceeding, both parties were in attendance at the hearing and the landlord knew of the hearing as of late October 2020. As such, I find that it is appropriate to proceed with the tenant's application.

Issues

1. Are the tenants entitled to an order cancelling the two-month notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord testified that she served the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on or about September 28, 2020. The reason for the Notice being issued is that the landlord's son and his wife will be taking possession of the property on February 2, 2020 and will be occupying the house. The son has obtained a mortgage on the property. Page one of the Notice was submitted into evidence, but both parties were in agreement as to the contents of page two of the Notice, which was not submitted into evidence.

The tenant testified that “there is a lot going on here” and that they are actively looking for a place to rent. There is also a fair amount of family health issues that I will not reproduce here. At no point during the hearing did the tenant dispute the ground on which the Notice was issued by the landlord, that is, that the landlord’s son and wife will be taking possession of, and occupying, the rental unit.

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 a tenancy, as is the case here, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the Notice is based. Here, the Notice was issued under section 49(3) of the Act, which states that a landlord may end a tenancy if “the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

The landlord gave evidence that her son – that is, a close family member – will be occupying the house. Indeed, he has already obtained a mortgage and will be taking possession on February 2, 2021. The tenant did not dispute the landlord’s evidence and submission on this point.

As such, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was given. Accordingly, the tenants’ application is dismissed.

Section 55(1) of the Act states the following:

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.

Here, I have reviewed the notice to end tenancy and find that it complies with section 51 of the Act. Further, I have dismissed the tenants’ application and uphold the Notice.

Therefore, I grant the landlord an order of possession of the rental unit. A copy of this order is issued, in conjunction with this decision, to the landlord. This order must be served on the tenants.

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 which is effective five (5) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1 of the Act.

Dated: January 8, 2021

Residential Tenancy Branch