



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, LRE, OLC, 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;
2. An Order for repairs - Section 32;
3. An Order restricting the Landlord's entry - Section 70;
4. An Order for the Landlord to comply - Section 62; and
5. An Order to recover the filing fee for this application - Section 72.

Preliminary Matter

Two persons BK and JK appeared at the hearing. The Parties agree that these persons are the purchasers of the house containing the rental unit, that they have been served with the hearing package by the Tenant and that they have evidence relevant to the dispute. The Parties agree to add BK and JK (the “Purchasers”) to the application as Respondents. The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Rule 4.2 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure (the “Rules”) provides that in circumstances that can reasonably be anticipated the application may be amended at the hearing. Given the agreed facts and consent of the Parties I consider that it has been reasonably anticipated that the Purchasers may be added to the application and I amend the application to add the Purchasers as Respondents to the application.

Rule 2.3 of the Rules provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claims for repairs, restricted entry and compliance are not related to the matter of whether the tenancy will end, as the claims are related to an ongoing tenancy and as the tenancy will end as set out below, I dismiss these claims without leave to reapply.

Issue(s) to be Decided

Is the notice to end the tenancy valid?

Is the Tenant entitled to its cancellation?

Are the Respondents entitled to an order of possession?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: There is no written tenancy agreement. The tenancy started on October 1, 2015. Rent is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. On October 11, 2020 the Landlord gave the Tenant a two month notice to end tenancy for landlord's use (the "Notice"). The Notice is signed and dated by the Landlord, sets out the rental address and an effective date of December 31, 2020, is on the RTB approved form and sets out, inter alia, that the purchaser of the unit has asked the Landlord in writing to give the Notice because the purchaser or a close family member of the purchaser intends in good faith to occupy the unit. The Notice attached a letter dated October 8, 2020 from purchaser JK asking for the tenancy to end and indicating that the purchaser or a close family member intends in good faith to occupy the unit. The Purchasers bought the house containing the unit and are occupying the house containing the unit.

The Tenant states that it believes that the Purchasers are not intending to occupy the unit as the Landlord told the Tenant at the time of serving the Notice that the Purchasers' mother-in-law is expected to occupy the unit. The Tenant states that it has no evidence to support this belief other than its testimony and a recording of the

conversation that the Tenant did not provide as evidence for this hearing. The Tenant states that it also believes that the purchasers do not intend to occupy the unit as they offered the Tenant a fixed term tenancy for four months. The Tenant states that this offer was made after the Tenant requested an extension of its tenancy until that time. The Tenant states that it did not sign the offered tenancy agreement as it contained clauses in the addendum that the Tenant did not agree with.

The Landlord states that it did not inform the Tenant that the Purchasers mother-in-law would occupy the unit. The Purchasers state that they intend to occupy the unit and have never informed anyone that the mother-in-law would occupy the unit. The Purchasers state that they agreed to offer the fixed term tenancy because of the Tenant's medical condition and because the Tenant has offered to waive its right to its one-month compensation if it was allowed to stay for another 4 months. The Purchasers state that they intended to occupy the unit at the end of the proposed four month term as stated in the tenancy agreement that was offered to the Tenant.

The Purchasers state that the rent for December 2020 was not collected in lieu of the one-month compensation for the ending of the tenancy and that rent was accepted for January 2021 as the Tenant continued to occupy the unit. The Landlord seeks an order of possession for January 31, 2021.

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(1) of the Act provides that "close family member" means, in relation to an individual, the individual's parent, spouse or child, or the parent or child of that individual's spouse. Even if the Purchasers did intend for the mother-in law to occupy the unit, as a mother-in law is defined as a close family member, I find that this is not evidence of bad faith intention that the purchaser or a close family member would occupy the unit as indicated in the October 8, 2020 letter from the Purchasers. Given the undisputed evidence that the Purchasers offered to extend the tenancy based on the Tenant's request and medical condition I find on a balance of probabilities that this is not evidence of a bad faith intention that the Purchasers did not intend to occupy the unit and is only evidence of an extension of the effective date of the Notice. Further given the Purchasers' evidence that they intend to occupy the unit themselves, considering the stated intention is included in the unaccepted tenancy agreement and as the Tenant has no other evidence to rebut this stated intention I find on a balance of probabilities that the Notice is valid for its stated purpose. I therefore dismiss the Tenant's claim to cancel the Notice. As the Tenant has not been successful with its claims, I decline to award recovery of the filing fee and in essence 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 in relation to form and content 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.

Based on the agreed facts that the Notice complies in form and content and as the Tenant's application has been dismissed, I find that the Landlord and Purchasers are entitled to an order of possession as requested by the Purchasers.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession effective 1:00 p.m. on January 31, 2021 to the Respondents. 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 RTB under Section 9.1(1) of the Act.

Dated: January 19, 2021

Residential Tenancy Branch