



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHERRY CREEK PROPERTY
SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions and arguments. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Should the Two Month Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order to have the landlord comply with the Act, regulation or tenancy agreement?

Background and Evidence

The landlord's agent gave the following testimony. The tenancy began on December 1, 2019 for a six-month term and thereafter on a month to month basis. The monthly rent of \$1400.00 is due on the first of each month. The agent testified that the property has been sold and that the new owner intends on living in the unit. The agent testified that a notice to end tenancy was given to the tenant on January 29, 2021 to end the tenancy

by March 31, 2021. The agent has offered alternative housing but in a different municipality.

The tenant gave the following testimony. The tenant testified that he is actively looking to move out but has been unable to find anything at this point. The tenant testified that the contract looks suspicious and questions whether he really has to move out as the contract is unclear about the tenancy. The tenant testified that he would move if given more time to find a home that is in the same school catchment that his children presently attend.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

When a landlord issues a notice to end a tenancy, they bear the burden of providing sufficient evidence to support the issuance of the notice. The tenant has called into question whether the landlord has issued the notice in good faith. However, the first issue that I must consider is the notice itself. The agent testified that the purchaser wants empty possession of the home but did not provide a written request to reflect this. The agent relies on a letter from her supervisor that mentions those intentions but is not an actual letter from purchaser to vendor. In addition, The Offer to Purchase and Agreement to Sale does not specify that the purchaser is asking the vendor to end the tenancy in accordance with the Residential Tenancy Act. Section 49 of the Act addresses the issue before me as follows:

The landlord issued the Two Month Notice to End Tenancy for Landlords Use of Property on the following ground:

Landlord's notice: landlord's use of property

49 (5)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.

Based on the above and the insufficient evidence that the purchaser has asked the vendor in writing, to end the tenancy, I find that the landlord has not provided sufficient evidence to support the notice to end tenancy on the grounds applied for, accordingly; I cancel the Two Month Notice to End Tenancy for Landlords Use of Property dated January 29, 2021. The notice is of no effect or force.

The tenant did not provide sufficient evidence to merit a specific order for the landlord to comply with the Act, regulation or tenancy agreement, accordingly; I dismiss that portion of his application.

Conclusion

The Two Month Notice to End Tenancy for Landlords Use of Property dated January 29, 2021 is cancelled. The tenancy continues.

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: March 23, 2021

Residential Tenancy Branch