



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNL-4M-MT

Introduction

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

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) pursuant to section 49;
- 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.

The tenant and both named landlords attended the hearing via conference call and provided affirmed testimony.

At the outset, the tenant's application was clarified.

The tenant named both her previous landlord/seller, A.N. and the new landlord/purchaser, J.P. in this dispute. Both the landlord/seller and the landlord/purchaser confirmed that the sale was completed and the landlord/purchaser now had possession of the property. The new landlord, J.P. stated that the application filed by the tenant has incorrectly spelled the name of the new landlord. After some lengthy discussions, the tenant confirmed that the new landlord's name was incorrectly filed as per the submitted copy of "Tenant Occupied Property- Buyers Notice to Seller for Vacant Possession" dated December 2, 2020. Both parties agreed to the correct spelling change of the new landlord, J.P. As such, the tenant's application shall be amended to reflect the proper spelling of the new landlord and the removal of the named landlord, A.N.

Further discussions took place to clarify the tenant's application. The tenant confirmed that she was not served with a 4 month notice and as such, the request to cancel a 4

month notice to end tenancy for Demolition, Renovation, or Conversion and more time was made in error and may be removed from the application. The hearing shall proceed only on the tenant's application to cancel the 2 month notice for landlord's use of property.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a 2 month notice?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 1, 2013 on a month-to-month basis as per the submitted copy of a signed tenancy agreement dated April 3, 2013. The monthly rent was \$600.00 payable on the 1st day of each month. A security deposit of \$300.00 was paid.

The tenant submitted a copy of a 2 month notice to end tenancy for landlord's use of property dated December 9, 2020 which provides for an effective end of tenancy date of March 15, 2021. The reason selected on the notice states:

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 notice also provides for the purchaser's name, J.P. of Surrey. The tenant also submitted a copy of a form, "Tenant Occupied Property- Buyers Notice to Seller for Vacant Possession" dated December 2, 2020.

The tenant stated that she wishes to continue living at the "coach house" as she has been living there for 8 years with no problems. The tenant stated that she has a disability regarding post traumatic stress disorder. The tenant stated that she pays rent of \$675.00 per month which includes all her utilities. The tenant stated that she suffers from mental and emotional health issues.

The tenant stated that there were no issues with the 2 month notice and that both the previous landlord and the new landlord have been very professional.

The landlord, J.P. confirmed that he purchased the property from A.N. and provided a written request "Tenant Occupied Property- Buyers Notice to Seller for Vacant Possession" dated December 2, 2020." The landlord confirmed that upon receipt of this A.N. issued a 2 month notice to end tenancy for landlord's use of property dated December 9, 2020 which was served to the tenant. The tenant confirmed receipt of the 2 month notice as claimed. The landlord stated that he is in the process of moving into the main building of the property and will be occupying the "coach house" as soon as the tenant has vacated it.

Analysis

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

In this case, the landlord has provided undisputed affirmed evidence that he and his family will be occupying the property as soon as the tenant has vacated. The landlord stated that upon the tenant vacating the "coach house" the landlord's family shall be occupying it. The tenant despite arguing that she is disputing the notice has stated that there is nothing wrong with the notice, but that she does not wish to move.

I find on this basis, that the 2 month notice dated December 9, 2020 is valid and the tenant's application to cancel the 2 month notice is dismissed. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date of the notice has now passed.

Conclusion

The tenant's application is dismissed without leave to reapply.
The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 19, 2021

Residential Tenancy Branch