



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, OLC

Introduction

On March 11, 2021, the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property. The Tenant also applied for an order to the Landlord to repair the rental unit and for the Landlord to comply with the Act, Regulation, or tenancy agreement.

The matter was scheduled as a teleconference hearing. The Tenant and the new owner of the residential property attended the hearing. The previous Landlord did not attend. The Tenant asked to amend his application to include the name of the new property owner. The application was amended accordingly.

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 parties were informed that recording the hearing is not permitted.

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.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the issuance of the Two Month Notice. The Tenant's request for repairs of the rental unit is dismissed with leave to reapply.

Issues to be Decided

- Is the tenancy ending based on a Two Month Notice to End Tenancy for Landlord's Use of Property?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Tenant testified that the tenancy began on June 1, 2019 as a fixed term tenancy ending on May 31, 2021. The Tenant stated that the agreement was that the tenancy could continue thereafter on a month to month basis. The Tenant stated that he selected box D on the tenancy agreement indicating the tenancy would continue on a month to month basis in the absence of another fixed term agreement.

The Tenant provided a copy of the tenancy agreement. The tenancy agreement indicates rent in the amount of \$3,600.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$1,800.00.

The new owner stated that the terms of tenancy provided above are correct to her understanding.

The new owner testified that she purchased the residential property on December 13, 2020 and the possession date for the residential property was March 30, 2021. The new owner testified that she asked the original Landlord to issue a Two Month Notice to the Tenants because she intends to occupy the residential property. The new owner provided a copy of the Buyers Notice to Seller. The Buyers Notice dated February 19, 2021 indicates that the buyer intends in good faith to occupy the property and directs the seller (the original landlord) to issue the Two Month Notice.

The Landlord issued the Tenant a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 20, 2021 ("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 which matches the name of the owner who attended the hearing. The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is May 31, 2021.

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 March 11, 2021, within the required time period. The Tenant remains living in the rental unit.

The purchaser testified that she is still waiting to occupy the residential property. She testified that she will be occupying the residential property and not renting it out. The owner also provided a copy of a 2021 property tax notice for the residential property dated May 13, 2021. The tax notice is for the address of the residential property and is in her name.

In response to the property owner's testimony, the Tenant testified that when he first entered into the tenancy agreement there was an agreement for a two-year lease and a verbal agreement that he would stay on a month to month basis for another two years.

The Tenant stated that the Landlord did not properly transfer the lease to the new owner and did not follow the tenancy laws. The Tenant stated that he informed prospective purchasers of the home that he intended to remain living in the home.

The Tenant provided testimony that he has performed many repairs and improvements to the property and that the original landlord did not replace appliances and fix water issues and other items. The Tenant stated that he injured himself on the property and is undergoing treatment.

The Tenant was asked to explain which section of the Act that the Landlord failed to follow, and the tenant responded that his tenancy should not end because they selected box D on the tenancy agreement that the tenancy would continue on a month to month basis with a verbal agreement that the Tenant would stay for two further years.

The Tenant was asked if he had any evidence that the new owner does not intend to occupy the rental unit and the Tenant did not answer directly other than mentioning that the Landlord did not do needed repairs.

Analysis

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.

...

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

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

I find that the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 20, 2021. The Two Month Notice indicates that 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.

I accept the evidence before me that Ms. S. L. is the purchaser / owner of the residential property. I find that the purchaser of the residential property has the right to end the tenancy if they intend in good faith to occupy the rental unit. I accept the owner's testimony that she intends to occupy the residential property.

The purchaser of a property may not end a fixed term tenancy prior to the end date of the fixed term. I find that the original Landlord and Tenant entered into a two-year fixed term tenancy that ended on May 31, 2021. There is no evidence before me that the tenancy was renewed for a further fixed term. I find that any verbal agreement that the Tenant was going to stay in the unit for two years while on a month to month basis does

not give the Tenant a right of possession for the rental unit for a two-year period. As of May 31, 2021, the tenancy was on a month to month basis. A Landlord may end a month to month tenancy for Landlord use of property with two months notice. I find that the earliest date that the fixed term tenancy could legally end by way of a Two Month Notice is May 31, 2021.

I find that the original Landlord and new owner did not breach the Act by issuing a Two Month Notice to end the tenancy on May 31, 2021.

With respect to the new owners intention to occupy the rental unit, there is insufficient evidence from the Tenant to establish that the new owner does not have a "good faith" intention to occupy the residential property. I find that the purchaser of the property intends to occupy the rental unit. I find that the Two Month Notice was issued in compliance with section 49(5) of the Act.

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 20, 2021, is dismissed.

Under section 55 of the Act, when a Tenant's Application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Two Month Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective June 30, 2021, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The fixed term tenancy agreement ended on May 31, 2021.

The purchaser of the residential property had a right under the Act to end the tenancy for Landlord's use of property by way of a Two Month Notice with an effective date of May 31, 2021.

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 20, 2021 is dismissed.

I grant the Landlord an order of possession effective June 30, 2021, after service on the Tenant. This order may be filed in the Supreme Court 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: June 21, 2021

Residential Tenancy Branch