



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT

Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenant seeking more time than prescribed to dispute a notice to end a tenancy and for an order cancelling a notice to end the tenancy for landlord's use of property.

The landlord and one of the tenants attended the hearing, and the tenant also represented the other tenant.

The parties each gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties were also given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in good faith and in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that he is not the current landlord, but purchased the rental unit. As such, the landlord has no knowledge of when the tenancy began or how much the rent is.

The Contract of Purchase and sale is dated April 8, 2021, and the landlord testified that financing and completion is July 8, 2021, and the landlord takes possession on July 10, 2021. Conditions were removed on April 15, 2021, and his parents and another purchaser's parents intend to occupy the rental home.

The landlord has provided an Affidavit indicating that he and another person, who both signed the Affidavit, both have families who live with them and that the rental unit will be occupied by the purchasers and close family members, and that there are 2 families moving in and therefore the entire home is needed.

The tenant testified that this tenancy began on August 1, 2015 and the tenant still resides in the rental unit. Rent in the amount of \$1,365.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 as well as a pet damage deposit in the amount of \$200.00, both of which are still held in trust by the landlord. There is a written tenancy agreement, however a copy has not been provided for this hearing.

The tenant's evidentiary material states that she did not file the dispute within 15 days of being served with the notice to end the tenancy because she, and her mother, who also lives in the rental unit have tested positive for COVID-19, and as such cannot have anyone else assist her.

The house has 2 units and each has 3 bedrooms. The tenant has also provided a copy of a Contract of Purchase and Sale which contains a condition of the buyer arranging suitable financing on or before April 15, 2021, failing which the offer is null and void. It also states that the buyer and seller agree that the buyer can add other names for mortgage purposes, will be vacant possession, and the seller will give notice to the tenants.

The tenant further testified that the selling landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property. A copy has been provided for this hearing and it is dated April 28, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it 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."

When the tenant served evidence to the landlord, there were no boxes and no packing up, so the tenant is certain that neither the landlord nor the purchaser are moving in.

Analysis

Firstly, I accept the written submissions of the tenant that the application was filed late because the tenants have been sick with COVID-19 and have not been able to have someone else assist due to quarantine rules and illness. Therefore, I grant more time than prescribed to dispute the notice to end the tenancy.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in good faith and in accordance with the *Residential Tenancy Act*.

In this case, the Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) was given by the seller, and the tenant named the purchaser of the property as the respondent landlord. The *Residential Tenancy Act* specifies (underlining added):

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.

The consequences set out in the *Act* refer to compensation:

51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Generally, a tenant names the landlord who gave the notice to end the tenancy as respondent when disputing it. However, given that the *Act* specifies that compensation

could be sought against the purchaser, I find that the tenant has brought this dispute as against the purchaser because the tenant does not believe that the purchaser has acted in good faith.

The respondent landlord has provided an Affidavit that states that the home will be occupied by the landlords and close family members, but the landlord testified that the purchasers are not moving in, but their parents are. There must be no ambiguity.

No other evidence, such as a copy of a written request to give the Notice, or another document indicating that the conditions for the sale of the home have been satisfied have been provided by the landlord. The landlord testified that at least one of the conditions was to obtain financing, which has been approved but the mortgage documents have not yet been signed. No document has been provided to satisfy me that prior to issuing the Notice all conditions for the sale had been satisfied. Further, the Contract of Purchase and Sale names one person as the buyer.

In the circumstances, I am not satisfied that the landlord has acted in good faith, and I cancel the Notice.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated April 28, 2021 is hereby cancelled and 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: June 29, 2021

Residential Tenancy Branch