



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, LRE, PSF, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided affirmed testimony. The landlord, K.R. attended the hearing with his agent, A.B. and provided affirmed testimony. The named landlord, A.P. did not attend or submit any documentary evidence.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

At the outset, both parties confirmed that the named landlord, A.P. is not a landlord, but was a prospective buyer of the landlord's property. The tenant confirmed that A.P. was the purchaser and not listed on her tenancy agreement as K.R. The landlord provided undisputed affirmed testimony that as of the date of this hearing that sale is no longer

valid due to the tenant's dispute of the notice. On this basis, I find that A.P. is not a landlord and amend the tenant's application with the consent of both parties to remove A.P.

Further discussions with both parties confirmed the tenant's request(s) for:

- An order for the landlord to comply;
- An order to suspend or set conditions on the landlord's right to enter;
- An order for the landlord to provide services or facilities.

These issues were confirmed by the tenant as being unrelated to the primary issue to cancel the notice to end tenancy for landlord's use of property. Pursuant to Rule 2.3 of the Rules of Procedure these portions of the tenant's application are dismissed with leave to reapply as they are unrelated to the primary claim to cancel a notice to end tenancy.

The hearing shall proceed on the tenant's request to cancel the notice to end tenancy and recovery of the filing fee.

Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on March 26, 2021.

The tenant stated that the submitted documentary evidence was served to the landlord in two parts, the first with the notice of hearing package and the second via Canada Post Registered Mail on June 25, 2021. The landlord argues that no evidence was received with the hearing package, but that evidence was received later on July 6, 2021. The landlord stated as result that the landlord was not able to file and serve evidence to the Residential Tenancy Branch and the tenant late until July 11, 2021 in response. The landlord states that despite this the landlord wishes to proceed. On this basis, I find that both parties are sufficiently served as per section 71 of the Act.

Issue(s) to be Decided

- Is the tenant entitled to an order cancelling the 2 month notice?
- Is the tenant entitled to recovery of the filing fee?

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.

Both parties confirmed the landlord served the tenant with a 2 month notice to end tenancy issued for landlord's use dated March 5, 2021. It specifically 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 2 month notice also displays an effective end of tenancy date of "03-05-2021" for March 5, 2021.

The tenant provided written details which states in part that due to illness the tenant needs more time to find a place.

The landlord's agent clarified that since this notice was served the sale with that prospective purchaser was not completed. The landlord's agent stated that a new "Contract of Purchase and Sale" dated May 28, 2021 was entered into with a new purchaser. The landlord's agent referred to a "Contract of Purchase and Sale Addendum" dated May 29, 2021 which states in part,

Vacant Possession:

The Seller will give written notice to the tenant(s) to vacate the premises, but only if Seller receives the written request from the Buyer to give such notice to in accordance with the requirements of Section 49 of the Residential Tenancy Act.

This does not relieve buyer(s) and the seller(s) from their other obligations.

All other terms and conditions pertaining to the contract remain the same.

Time is of the essence.

[reproduced as written]

The landlord's agent was asked if the Seller received the written request from the Buyer for the tenant to vacate the premises for the Buyer to occupy the property. The landlord's agent stated that no such written request has been received by the Seller.

Analysis

Section 49 (5) of the Act sets out that a landlord may end a tenancy in respect of a rental unit if all the conditions on which the sale depends have been satisfied and the purchaser asks the landlord, in writing, to give notice to end the tenancy and the purchaser is an individual or a close family member of the purchaser, 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 confirmed that due to the tenant's application for dispute the Contract of Purchase by the original purchaser dated January 18, 2021 was not completed for the closing date of April 30, 2021.

However, the landlord provided undisputed affirmed testimony that a new Contract of Purchase dated May 28, 2021 which provides for a closing date of July 19, 2021.

As the Contract of Purchase dated January 18, 2021 is no longer valid, I find that the 2 Month Notice dated March 5, 2021 is set aside and cancelled as it was based upon the written request for vacant possession by the purchaser of that Contract of Purchase.

The landlord however seeks an end to the tenancy based upon a new purchaser as shown by the Contract of Purchase dated May 28, 2021. However, the landlord has not provided any evidence of a written request from the purchaser requesting a notice be given to the tenant to end the tenancy after all the conditions of the sale have been satisfied. The tenant's application is granted. The 2 month notice dated March 5, 2021 is cancelled. The tenancy shall continue.

The tenant is entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application to cancel the 2 month notice is granted.

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: July 12, 2021