



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes GNR CNL, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and the landlord was accompanied by his son to translate. The parties each gave affirmed testimony, and the landlord's son was affirmed to well and truly interpret the proceedings from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of his skill and ability.

The parties agree that the tenant has provided the tenant's evidence to the landlord. No evidence has been provided by the landlord.

At the commencement of the hearing, the tenant applied to amend the application to show that the tenant disputes a Two Month Notice to End Tenancy for Landlord's Use of Property, submitting that the tenant was nervous when the Application for Dispute Resolution was made and the wrong dispute was made. Considering the evidence provided, I agree that the tenant meant to dispute the Two Month Notice to End Tenancy for Landlord's Use of Property, and the landlord has been put on notice, and I amended the application.

All evidence of the tenant 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 issued in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord testified that he purchased the rental home on June 10, 2015 and the tenant resided in the rental unit prior to that. The landlord resided in the upper level of the home until it sold. Rent in the amount \$1,050.00 is payable on the 1st day of each month and there are no rental arrears, however the landlord did not collect rent for the month of July, 2021 as compensation required. No security deposit or pet damage deposit was paid by the tenant; the previous landlord was a friend of the tenant and did not collect any deposits. A written tenancy agreement has been provided for this hearing, which specifies rent in the amount of \$700.00.

The landlord further testified that on May 28, 2021 he served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property. He attempted to hand it to the tenant, but the tenant refused it so the landlord taped it to the door of the rental unit and saw the tenant take it off the door and take it into the rental unit. A copy of the Notice has been provided for this hearing and it is dated May 28, 2021 and contains an effective date of vacancy of May 26, 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." Also provided with the Notice is a document entitled "Tenant Occupied Property - Buyers Notice to Seller for Vacant Possession" which is dated April 5, 2021 and signed by a buyer but not witnessed by anyone, requiring the landlord to give notice to the tenant terminating the tenancy and requiring the tenant to vacate the property by 1:00 p.m. August 1, 2021.

New owner is currently renovating the upper level of the home. The contract says that until the tenant moves out, the new owner is holding back \$5,000.00 and the landlord is paying the new owner an additional \$300.00 per month because the purchaser has set the rent to \$1,350.00 per month. The purchaser has not yet moved in and says he wants the basement empty.

When asked if the purchaser intends to re-rent the basement suite, the landlord testified that he does not know; the purchaser said he was going to renovate and live there.

The tenant testified that the new owner has not moved in; and wants to re-rent for a higher amount. There are 3 suites in the rental home and the new owner just rented out 2 suites effective September 1, 2021. The tenant is aware of that because he met them and gave them the internet password. They told the tenant that they were new renters. If the purchaser wanted to use the tenant's suite, he ought not to have rented the other 2 suites.

The motive is to re-rent for a higher amount.

Analysis

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 accordance with the *Residential Tenancy Act*, and in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*.

The landlord did not provide any evidentiary material but testified that the purchaser is withholding \$5,000.00 until the rental unit is vacated. The landlord also testified that he is paying an additional \$300.00 per month rent because the purchaser has set the rent to \$1,350.00. The purchaser may not charge rent to the landlord; the purchaser would then, in effect, have a tenancy agreement with the landlord but the rental unit is already rented.

The law also requires that a landlord may not issue a notice to end the tenancy once a rental unit is sold until all of the conditions for the sale of the rental home have been satisfied. If the purchaser is withholding money, I am not satisfied that all of the conditions for the sale of the property were satisfied prior to issuing the Notice.

I have also reviewed the Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession and note that it is signed by a buyer, but the witness portion is left blank. It states that the purchaser requests that the seller, as landlord, give the notice to end the tenancy terminating the tenancy and requiring the tenant to vacate the property by August 1, 2021, and is dated April 5, 2021.

The landlord did not dispute the tenant's testimony that 2 other suites within the rental complex were rented September 1, 2021, and that the tenant spoke with the new residents.

The purchaser was not called to testify, and in the circumstances, I am not satisfied that the purchaser has good faith intent to use the rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property, and I cancel it.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant may reduce rent for a future month by that amount, or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated May 28, 2021 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: September 18, 2021

Residential Tenancy Branch