



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

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 Landlords Use of Property (the 2 Month Notice) pursuant to section 49.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Adjournment Request

GR requested that the matter be adjourned. GR submits that the previous advocate suddenly left his office and that he only came onto the file last week. The landlord was opposed to the adjournment as the property is sold and subjects have been removed with the buyer expecting possession on January 15, 2022. GR submits that he isn't prepared for the hearing and needs more time. Residential Tenancy Branch Rules of Procedure 7.9 addresses the issue as follows.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

GR submits that he's not ready to proceed as he didn't have enough time to prepare. GR didn't provide sufficient information as to what he would prepare and how an adjournment would assist. In addition, the issue arose from his office's inability to schedule an advocate for this hearing, nothing that the landlord did. Furthermore, the landlord has relied on a one-page document as to the reason why they wish to end this tenancy. GR had over a week to review the one page. GR has not provided sufficient reasons to meet any of the criteria listed above. I find that it would be procedurally unfair and prejudicial to the landlord if an adjournment was granted. The adjournment is denied. The hearing proceeded and completed on this date.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord's agent DB gave the following testimony. The tenancy began on or about October 8, 2020. Rent in the amount of \$1490.00 is payable in advance on the first day of each month. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on October 18, 2021 with an effective date of December 31, 2021. DB testified that the unit has been sold and that the purchaser has asked that the current owner issue the notice to end the tenancy as they intend to move into the unit.

2 Month Notice to End Tenancy

The landlord's 2 Month Notice, entered into written evidence by both parties, identified the following reason for seeking an end to this tenancy:

- *All of the conditions for 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.*

CM testified that the purchaser intends to move into the unit as they really liked the proximity to Skytrain. CM testified that the purchasers realtor sent him the "TENANT OCCUPIED PROPERTY - BUYERS NOTICE TO SELLER FOR VACANT POSSESSION" on October 14, 2021 requesting that the present owner end the tenancy so that the purchaser could move into the unit, as per the purchasers request.

GR gave the following submissions. GR submits that something "doesn't seem right and that something is rotten in Denmark". GR submits that the document relied upon by the landlord is unwitnessed. GR submits that there is no way of knowing who is actually buying the unit and whether they will be moving in. The tenant testified that the inspector that attended on behalf of the buyer said, "its going to be big renovation". The tenant testified that she thinks she should have gotten a notice for renovation.

Analysis

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 arguments are reproduced here. The principal aspects of the tenant's claim and my findings is set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

a Notice to End Tenancy at another rental unit;

an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or

a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

CM provided details as to the mechanics of the sale and the process involved. CM explained the logistical benefits of the location as one of the primary reasons that purchaser bought the home. GR had thirty minutes of uninterrupted time to question the agents. GR spent the majority of his time asking irrelevant and illogical questions. In his own words he stated that he is "flailing about" as he wasn't sure what he should be asking. Both agents gave clear concise and credible testimony.

GR questioned the veracity of the buyer's document requesting the tenancy to end. CM gave clear unequivocal evidence to explain the process when a property is sold and that the system in place for streamlined transactions. CM explained how the "Authenti-sign" system worked and how there is a certificate of same. CM further explained that the buyer's realtor verifies the person buying the property and that they requested empty possession in good faith and that the present owner issued the Notice to End Tenancy as per their instructions. I find the sworn testimony of CM regarding the request for vacant possession compelling. Based on the above, and on a balance of probabilities, I

find that the landlord has issued the notice in good faith on behalf of the buyer. I find that the notice to end tenancy complies with section 52 of the *Act* in form and content. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the *Act*.

The Notice is of full effect and force. The tenancy is terminated.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenant's application is dismissed in its entirety without leave to reapply.

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: November 30, 2021

Residential Tenancy Branch