



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL FFT

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 24, 2021 (2 Month Notice) and to recover the cost of the filing fee.

The tenant, and the landlord, and a support person for the landlord, KL (support) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. All participants were affirmed.

As neither party raised any concerns regarding the service of documentary evidence and their ability to review documentary evidence prior to the hearing, I find there were no issues with the service of documentary evidence.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Should the 2 Month be cancelled under the Act?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The parties agreed that a month-to-month tenancy began on April 4, 2004. The parties also agreed that current monthly rent in the amount of \$994.00, is due on the first day of each month. There was no dispute that the tenancy has been for 17 years.

The tenant was served with the 2 Month Notice dated June 24, 2021 and applied to dispute the 2 Month Notice on July 7, 2021, which is within the 15-day timeline provided under the Act to dispute such a notice. The effective vacancy date on the 2 Month Notice is listed as August 31, 2021, which has passed. Page two of the 2 Month Notice indicates the reason as follows:



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 tenant indicated that they were disputing the 2 Month Notice the landlord has a history of providing a notice that was cancelled as the landlord failed to prove reason stated in the Notice to End Tenancy. The tenant submitted a copy of a previous decision dated April 29, 2021, the file number of which has been included on the style of cause for ease of reference and will be referred to as "Previous Decision".

The tenant testified that the Previous Decision resulted in the landlord's 4 Month Notice to End Tenancy for Demolition, Renovation or Conversion to Another Use (4 Month Notice) being cancelled as the landlord failed to prove the 4 Month Notice.

The parties agree that the tenant occupies the upper portion of a home and that the home also has a rental unit in the basement currently rented to other tenants. The tenant writes in their application that the landlord did not have a "For Sale" sign on the property or have a real estate agent and has advised him verbally that he is not selling the house. The tenant also stated that they have not seen any notarized documents that

support that the funds (first mortgage listed on the Contract for Purchase and Sale (Contract) clause 9(e)) which states as follows:

e. Other Subject to a new 1st mortgage being made to the buyers on or before June 29th, 2021

The landlord did not provide evidence that the Clause 9(e) subject was removed in their documentary evidence and did not testify to that either during the hearing, which I will address later in this decision.

The landlord submitted several letters. The first letter is dated June 23, 2021 and is from GC, who according to the landlord is the purchaser (Purchaser). The letter reads in part as follows and matches the rental unit address:

June 23, 2021

I, [redacted], the purchaser, give the sellers, [redacted] written request to end the tenancy for the upstairs tenant for Aug 31, 2021. I will be moving into the top unit, [redacted], as my primary residence. Please give the tenant the required notice as per the BC Rental Tenancy Act so I can have vacant possession for Sept 1, 2021 as per the purchase contract.

[redacted to protect personal information]

Another letter reads as follows and does not match the rental unit address:

August 13, 2021

The Contract of Purchase and Sale – Amendment

[redacted]

The closing date will be changed from September 1, 2021 to November 20th, 2021 or sooner.

All other terms and conditions remain in place.

[redacted to protect personal information]

Another letter dated August 30, 2021 which does not match the rental unit address reads as follows:

August 30, 2021

To Whom It May Concern:

[redacted] are purchasing the property [redacted]
[redacted] BC [redacted] from [redacted]. The sale was to
have went thru on September 1, 2021. It now is due to close after Nov 5, 2021.

We first met [redacted] on Facebook Marketplace. He was looking for an investor to buy into the house. After seeing the property on June 5th, 2021 and some discussion, we decided that we would not like to be an investor but to purchase the property for [redacted] to live in and rent out the basement suite. We entered into a purchase agreement on June 14th 2021 to purchase the property at [redacted] BC.

Neither [redacted] had ever met nor talked to [redacted]
[redacted] prior to this deal.

[redacted to protect personal information]

The landlord also provided a letter from their lawyer dated October 25, 2021, which confirms that they have been retained by the landlord to act for sale of the property, which matches the rental unit address. The same letter also confirms that SG has been retained to act for the Buyer in the transaction.

The landlord did not submit a Land Title Search to describe the discrepancy between the two different addresses, 407 and 409. The tenant reinforced that the Contract lists 407 and that the rental unit address is 409.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice – I find that there is insufficient evidence before me to support that a key subject of the Contract has been removed to complete the sale. That key subject is clause 9(e) of the Contract (Financing) which is a subject that would have to be removed from the Contract before the sale could be finalized. In addition, I find the Contract address of 407 does not match the rental unit address of 409 and that I have

insufficient documentary evidence to support the legal description of unit 409, such as a Land Title Search.

Given the above, I find the landlord has provided a Contract which still has a subject that has not been removed as of the date of the hearing as the Financing subject remains as part of the Contract before me. I have also considered the discrepancy between address 407 and the rental unit address, 409 as the Contract does not list 409, which is the rental unit address. Therefore, I find the tenant's application to cancel the 2 Month Notice is successful, and I cancel the 2 Month Notice issued by the landlord dated June 24, 2021.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant the \$100.00 filing fee pursuant to section 72 of the Act.

I authorize a one-time rent reduction for the tenant in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The tenant's application to cancel the 2 Month Notice is successful.

The 2 Month Notice issued by the landlord is cancelled and is of no force or effect.

I find the landlord has provided sufficient evidence to support the reason stated on the 2 Month Notice.

The tenancy shall continue until ended in accordance with the Act.

The tenant is granted a one-time rent reduction as noted above for the filing fee.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 8, 2021