



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on September 28, 2021, with an effective vacancy date of November 30, 2021.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The parties agreed that the Notice was served on the tenant. The reason stated in the Notice was that:

- 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 intends in good faith to occupy the rental unit.

TB testified that they purchased the property and as a condition of sale they requested that the Notice be given to the tenant. TB stated that the property was ideal for their family as it has two rental units, one is in the basement and the other is the cottage where the tenant is living. TB stated that they took possession of the property on October 29, 2021.

TB testified that there are many purposes that they want the use of the cottage, as both he and his wife work from home and need their own office space and they also have three young children who are home schooled and have guest who want to come and visit.

TB testified at the onset of the pandemic they shifted their work to be online to do video consultations as he designed fitness and rehabilitation programs and his wife when not home schooling the children is a self-employed educational consultant and that is why they were able to move from the mainland to this small Island. TB stated that often they need an area that is free from the noise of the children.

TB testified that they were also planning a renovation in the main house, and they will need the cottage to use the kitchen facilities, while the repairs are made. TB stated that this is causing hardship for their family as they wanted to have the repairs and renovations made to the main house before the birth of their fourth child.

The tenant testified that TB and his wife have corporate companies, so this is not a home office, and this is a space of approximately 750 square feet, which the bathroom takes up a big portion of the area and is not ideal for them to be operating an office.

The tenant testified that the kitchen area is also small and would not be ideal for a family to prepare meals, while renovations are taking place.

The tenant testified that there is also an illegal suite in the basement of the main house, which is contrary to the bylaws and the bylaws also do not permit a secondary unit to be use for business purposes.

The advocate stated that the tenant's friends also overheard the realtor that was hired by the seller that the plan was to move the other renter into the cottage.

TB responded that any conversation the tenant's friends may have heard was hearsay. TB stated that this person was not their real estate agent and would have had no ideas of what their plans were for the property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this matter TB purchased the property and ask the landlord to give the Notice in accordance with section 49 of the Act. A copy of the Notice was filed in evidence, I find the Notice meets the requirements of section 52 of the Act.

The evidence of TB was they want to use the rental unit as an extension of their home while they make repairs to the main house as they will need the kitchen area during the renovation. The evidence of TB was that they will also be using as office space for working from home, for home schooling their children and for other personal uses such as to have guest stay. I find this is reasonable as the property is located on a small Island of the coast of the mainland.

While the tenant believes having an office is contrary to the bylaws for occupying a secondary unit for a business; however, I do not consider issues of bylaws until an order of compliance is before me. I find it highly unlikely the bylaw department would prohibit the property owners from working from their property, especially when during a pandemic and where their work is primarily done by video consultations as this would have no impact on the community. Also, even if their business is registered as an incorporated company this does not take away their rights to be able to work from home, and many residences accommodated home office.

While I accept that TB has identified many uses for the space; however, it is all for their own personal use or their own guest.

I cannot put any weight on a hearsay conversation that was overheard by a third party and that was said to be of a conversation of the seller's real estate agent having a private conversation with unidentified parties. This was not the purchaser's real estate agent. Also, the document submitted as evidence has been redacted, so there is no way this document could be verified by the respondent as it does not identify the writer.

Based on the above, I am satisfied that the purchaser does intend to use and occupy the premises for their own use. Therefore, I find the Notice is valid and remains in full force and effect.

Therefore, I dismiss the tenant's application to cancel the Notice.

As the landlord has accepted occupancy rent for the month of February 2022, I find it appropriate to extend the effective vacancy date in the Notice to February 28, 2022, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

I find that the landlord is entitled to an order of possession effective **February 28, 2022, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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: February 18, 2022

Residential Tenancy Branch