



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL

Introduction

This hearing was convened in response to an application filed by the Tenant, in which the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use.

The Tenant stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on December 14, 2021 were delivered to the office of the Landlord's realtor, although he does not recall the date of service. The Agent for the Landlord stated that these documents were provided to him by his realtor sometime in December of 2021, although he does not recall the date of service. As these documents were received by the Agent for the Landlord, I find that they were sufficiently served pursuant to section 72 of the *Residential Tenancy Act (Act)*, and the evidence was accepted as evidence for these proceedings.

On January 24, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant's son on January 24, 2022. The Tenant acknowledged receiving these documents on January 24, 2022. Although this evidence was received by the Tenant one day after the service deadline established by the Residential Tenancy Branch Rules of Procedure, I find that the delay in service was not unreasonable and that the Tenant had sufficient time to consider the evidence.

I find the delay in service was not unreasonable, in part, because the Tenant opted to serve the hearing documents to the Landlord's realtor, rather than to the Landlord. Although neither party can recall the date of service, I find it reasonable to conclude that this method of service resulted in a delay in documents being served to the Landlord by

his realtor, which may have contributed to a delay in evidence being served to the Tenant.

As the Tenant acknowledged receiving the Landlord's evidence on January 24, 2022 and I have concluded that the delay in service of this evidence was not unreasonable, that evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began approximately 18 months ago;
- rent is due by the first day of each month;
- a Two Month Notice to End Tenancy for Landlord's Use, dated November 29, 2021, was personally served to the Tenant on November 29, 2021;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by January 31, 2022;
- the Two Month Notice to End Tenancy for Landlord's Use declared that all the conditions of sale have been satisfied and the purchaser has asked the landlord, in writing, to give the notice to end tenancy because the purchaser or close family member of the purchaser intends in good faith to occupy the rental unit.

The Agent for the Landlord stated that:

- on November 03, 2021 the Landlord entered into a contract for the sale of the rental unit;

- on November 06, 2021 the terms and conditions of the contract were accepted by both parties;
- the closing date of the sale is January 31, 2022; and
- the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant because in an Addendum to the Contract of Purchase and Sale, dated November 17, 2021, the purchaser asked the Landlord to serve a Two Month Notice to End Tenancy for Landlord's Use that was attached to the Addendum.

The Tenant stated that he does not believe the rental unit has been sold. He stated that it is an older home and he does not believe the new owner will want to live in it.

Analysis

Section 49(5) of the *Residential Tenancy Act (Act)* permits a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

On the basis of the testimony of the Agent for the Landlord and the Contract of Purchase and Sale submitted as evidence, I find that on November 06, 2021 the Landlord entered into a binding contract to sell the rental unit to a numbered company, effective January 31, 2022.

I find that Contract of Purchase and Sale submitted in evidence is far more compelling than the Tenant's testimony that he simply does not believe the rental unit has been sold.

As the rental unit was sold to a numbered company, the Landlord would have grounds to end this tenancy pursuant to section 49(5)(c)(ii) of the *Act* if the numbered company gave the Landlord written notice to end the tenancy because the purchaser is a family

corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

On the basis of the undisputed testimony, I find that the Landlord served this Two Month Notice to End Tenancy for Landlord's Use on the basis of information provided to the Landlord in an Addendum to the Contract of Purchase and Sale, dated November 17, 2021. The relevant portion of the Addendum reads:

BUYER REQUEST TO PROVIDE EVICTION NOTICE

The Buyer(s) hereby request the Seller to provide the current Tenant the attached RTB Notice to Vacate

I find that the information in the Addendum to the Contract of Purchase and Sale dated November 17, 2021 is insufficient to establish grounds to end the tenancy pursuant to section 49(5)(c)(ii) of the *Act* because the Addendum does not declare that the numbered company that purchased the unit is a family corporation and it does not declare that a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. Rather, the Addendum just requests that an attached Two Month Notice to End Tenancy for Landlord's Use be served to the Tenant.

Even if I was satisfied that the purchaser gave the Landlord proper written notice to end the tenancy because the numbered company that purchased the unit is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit and that the Landlord had grounds to serve notice to end tenancy pursuant to section 49(5)(c)(ii) of the *Act*, I find that such notice was not given to the Tenant. There is an area on the Two Month Notice to End Tenancy for Landlord's Use that can be selected if this is the purpose for ending the tenancy, however this area was not selected on this Two Month Notice to End Tenancy for Landlord's Use.

Rather, I find that the Two Month Notice to End Tenancy for Landlord's Use that was served to the Tenant on November 29, 2021 was served pursuant to section 49(5)(c)(i) of the *Act* which permits a landlord to end a tenancy if the purchaser asks the landlord, in writing, to give notice to end the tenancy and the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit. As the purchaser of the rental unit is a numbered company, I find that the Landlord does not have the right to end the tenancy pursuant to section 49(5)(c)(i) of the *Act*.

As the Landlord does not have the right to end the tenancy for the reason cited on the Two Month Notice to End Tenancy for Landlord's Use, I grant the Tenant's application to set aside the Two Month Notice to End Tenancy for Landlord's Use.

Conclusion

The Tenant's application to set aside the Two Month Notice to End Tenancy for Landlord's Use is granted. This tenancy shall continue until it is ended in accordance with the *Act*.

I specifically note that the new owner/landlord retains the right to serve the Tenant with notice to end the tenancy pursuant to section 49(4) of the *Act* if the new owner/landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

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 01, 2022

Residential Tenancy Branch