



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of property. The tenant also applied for the recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions to me. The parties agreed that they had received each other's evidence in a timely manner.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord/purchaser or the landlord/purchaser's spouse intend, in good faith, to move into the rental suite?

Background and Evidence

The tenancy started on January 15, 2022. The monthly rent is \$2,300.00 payable on the 15th of each month. The rental unit is a laneway house and is located on the same lot as the main house. The tenant stated that the main house is currently vacant.

Sometime in November 2022, the landlord YS, entered into a contract of sale and purchase with the buyer YY. The subjects were removed on November 21, 2022. On November 29, 2022, the landlord served the tenant with a notice to end tenancy for landlord's use of property. Attached to the notice was a copy of the buyer's notice to the seller for vacant possession of the tenant occupied property. The buyer's notice stated that the buyer or the buyer's spouse intended in good faith to occupy the rental unit. The tenant made application to dispute the notice in a timely manner.

On December 13, 2022, an amended notice to end tenancy was served on the tenant with an effective date of February 14, 2023.

The purchaser YY testified that she was acting on behalf of her daughter HY who currently lives abroad with her spouse and intends to return to Canada on January 28, 2023. The purchaser filed a copy of HY's flight ticket into evidence. The evidence indicates that the ticket is a round trip ticket and the return date is July 14, 2023.

YY also added that HY is the purchaser of the property and is expecting a child that she would like to give birth to in Canada. A doctor's note in a foreign language and a photograph of a scan were filed into evidence, to support HY's pregnancy. YY did not file any documents that authorized YY to purchase property or act on behalf of HY.

The realtor representing YY stated that an amendment to the addendum of the contract for purchase and sale (dated November 21, 2022) was made on November 23, 2022. The amendment, filed into evidence, stated that the buyer reserves the right to register the title in the name of H.Y. (daughter).

The tenant ED testified that on November 23, 2022, the realtor visited the rental unit with a bottle of wine to celebrate the accepted offer of purchase and sale of the rental property. ED stated that she was given to understand that the new owners were interested in continuing the tenancy and a higher rate of rent was discussed. The realtor denied having a discussion about the rental amount. The realtor stated that she was simply letting ED know that prospective buyers had commented on the rent being lower than market rate.

The tenant also drew my attention to the return date of the HY's ticket which is less than six months from the date the sale completes and possession is handed over. The tenant also questioned the true identity of the purchaser and the immigration status of the alleged buyer.

Analysis

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit.

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement.

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

Based on the testimony of both parties, I make the following findings:

1. The purchaser as per the contract, YY testified that the actual purchaser is HY and that YY was acting on behalf of HY. YY did not provide any documentation to support her testimony that she possessed power of attorney to act on HY's behalf.
2. Current technology has provisions to allow a person to conduct business from a distance. HY could have used these provisions to represent herself.
3. The buyer's notice to the seller for vacant possession of the tenant occupied property was signed by YY, who as per her testimony is not the purchaser of the tenant occupied property
4. If HY truly intends to live in the rental unit, her evidence (flight ticket) indicates that she will leave Canada prior to six months after moving in.
5. The rental unit is a laneway unit and is located on the same lot as the main house which is currently unoccupied.

Based on the evidence in front of me and the testimony of the parties, I find that the notice to occupy the rental unit was served by YY who by her own testimony, is not the purchaser of the property. Accordingly, the buyer's notice to the seller for vacant possession of the tenant occupied property, did not come from the buyer.

Even if I accept that HY is the purchaser and intends to move into the rental unit, she has failed to demonstrate that she plans to occupy the rental unit for at least 6 months. Finally, the main house is vacant and YY did not provide any testimony regarding the unsuitability of the main house, for HY to move into.

Therefore, I find that on a balance of probabilities, it is more likely than not that the purchaser did not act in good faith when they served the landlord with the buyer's notice to the seller for vacant possession of the tenant occupied property. In addition, the documented purchaser (YY) testified that she is not the purchaser and that HY is the purchaser. Therefore, the buyer's notice did not come from the purchaser.

For these reasons I must set aside the notice to end tenancy. The tenancy will continue on the original terms of the tenancy agreement. Since the tenants are successful in their application, I grant them the recovery of the filing fee. The tenants may make a one-time deduction of \$100.00 from a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue as per the terms of the tenancy agreement.

The tenants may make a one-time deduction of \$100.00 from a future rent.

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: January 15, 2016

Residential Tenancy Branch