



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on October 28, 2022, wherein the Tenants sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use, issued on October 22, 2022 (the "Notice") as well as recovery of the filing fee.

The hearing of the Tenants' Application commenced on December 6, 2022. Both parties called into the hearing. The Tenant D.B. called in as did her lawyer, R.R. The Landlord called in, as did his son, B.B. All in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The hearing on December 6, 2022 did not complete within the scheduled time and was adjourned to April 17, 2023. At that time the Tenant and her counsel called in as did the Landlord. The Landlord stated that he was ill with Covid. I asked him if he was well enough to proceed with the hearing as he confirmed he was. The Landlord's son did not attend the continuation of this matter.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the

Residential Tenancy Branch Rules of Procedure. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on April 17, 2023. This Decision was rendered on May 30, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord stated that he wishes to end the tenancy as he has sold the rental property to his son, B.B., who intends to reside in the building with his family. He testified that he has owned the rental building since 1975. The Landlord stated that he is 78 years old and has found that the rental building is too difficult to handle.

The Landlord confirmed that there are four units in the building and each unit has two bedrooms and a den. Currently, his granddaughter lives in #2. He stated that he believes it is his son's plan to have his adult son (the Landlord's grandson) live in the subject rental unit (unit #1). He further testified that it is his understanding that his son will be combining units #3 and #4 into one unit for his own use.

The Landlord stated that he intended to give the Tenant a notice to end her tenancy in August 22, 2022 when he gave a notice to the other tenants. However, he decided to wait until October of 2022 as they had another tenancy dispute.

The Landlord stated that his son B.B. sold his house at the end of October 2022. The Landlord confirmed that B.B. was living in the house with his children, who are 20 and 21 years old respectively. The Landlord confirmed that his grandchildren want more privacy and to have their own units within the larger building.

Although the Landlord initially testified the property had sold, he then stated that they have not completed the sale as the lawyers and the accountant are waiting to determine the price after factoring the tax he will pay for any capital gains. He further stated that there are no conditions on the sale. He did not provide a copy of the contract of purchase and sale. Nor did he give any testimony as to the sale price.

The Landlord's son, B.B., also testified. B.B. also stated that the sale has been held up because they are trying to figure out what the Capital Gains tax is going to be as B.B. intended to pay that amount as part of the purchase price. He confirmed there are no conditions on the sale of the property, save and except that the property be vacant. He further confirmed that it is his intention to occupy the entire rental property. He stated that he wants to take over two units and to combine them into one. His adult children will live in the building as well, but they will have their own units; his daughter is in #2 and his son will occupy #1 once the Tenants move out.

B.B. testified that in preparation for purchasing the rental building he sold the family home; the sale closed in August of 2022 and the owners took possession November 1, 2022. B.B. further confirmed that prior to moving, his son and daughter lived with B.B. and his wife. He stated that because they haven't been able to move their son into the rental unit all of their belongings are being stored in containers outside the rental building.

When the hearing ended on December 6, 2022, I informed the parties that when the hearing was scheduled to reconvene the Landlord's son, B.B. would be offered the opportunity to continue his testimony as to his intentions with the rental property. B.B. did not call into the continuation. When I asked the Landlord why, the Landlord stated that he had Covid and did not want to make his son ill. When I reminded the Landlord

that his son could have called in on a separate line, the Landlord stated that this “had nothing to do with [his] son”.

During his testimony on April 17, 2023 the Landlord confirmed that the son had not yet paid him for the property. He also claimed that he has personally lost \$12,000.00 in rental income and the amounts he has paid for utilities and insurance on the property.

The Landlord stated that he feels bad for the Tenants’ circumstances, but he is not able to extend the effective date as his son needs to move into the property.

In response to the Landlord’s testimony, the Tenant testified as follows. She confirmed she has lived in the rental unit since 2019.

The Tenant stated that currently the Landlord’s son, B.B. and his wife are in #4. The Landlord’s grandson is in #3 and their daughter is supposed to be living in #2, although the Tenant does not believe that she is actually living there. She stated that it seems the Landlord’s son is only using #2 as a laundry room.

The Tenant further stated that each unit has 2 bedrooms and a den and she does not understand why the Landlord’s son needs another 2 bedroom and den when they don’t seem to be using the space they already have.

The Tenant alleged the Landlord’s granddaughter is not actually using #2 and as such the son could move in there. That would allow the Landlord’s son to combine unit #3 and 4 as he intends and still have the subject rental unit #1 available for the Tenant. The Tenant stated that a washer and dryer went into #2 but from her observations there is no furniture. She also claimed that unit #3 is also vacant. She stated that they could move their items in and don’t need to leave them outside stored in containers.

The Tenant stated that it is her suspicion that the Landlord’s son and his family will only occupy two units, and rent out the other two.

The Tenant also stated that she does not believe the sale is actually happening as the property should have changed hands by now.

The Tenant further stated that she has not been able to look for alternate housing as she has serious health issues.

The Tenant also noted that the Landlord has previously tried to evict them by issuing three separate 1 Month Notices to end Tenancy for Cause: July 14, 2021; November 22, 2021; and, May 26, 2022. She stated that in each case the Tenants disputed the Notices and in each case the Notices were set aside; in the final hearing, on October 7, 2022, the Landlord did not attend. She also noted that she made an application for an Order that the Landlord honour his obligations under section 28. He was ordered to comply on August 12, 2022 and on the “heels” of that the Landlord served the 2 Month Notice.

The Tenant’s counsel submitted that the Landlord has ulterior motive for ending the tenancy as evidenced by the repeated notices to end tenancy. Counsel also noted that the Landlord has a history of non-compliance.

The Tenant’s counsel further submitted that the Landlord gave very little evidence as to his son’s plans to occupy the unit. She further noted that there is allegedly a contract of purchase and sale, yet that wasn’t provided.

Counsel also questioned the necessity of the Landlord’ son having all the units in the building and noted that the Landlord’s son’s family currently has 3 units, each of which have 2 bedrooms and dens, or 6 bedrooms. She stated that it was unclear how this is not sufficient for a family of four. Again, while they have showed photos of storage containers on the property there has been another unit that has come available (#3) such that the Landlord could have moved his things in there.

Counsel submitted that the true motive is the Landlord’s frustration with not wanting to honour his obligations to repair and maintain and protect the Tenants right to quiet enjoyment.

In reply the Landlord disputed the Tenant’s claim that one unit is being used only for laundry. He reiterated that his granddaughter lives in that unit, and further that she has painted the walls and put in her furniture. He stated that she is very busy as she a lifeguard and looks after dogs.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Act*. A landlord may regain possession of their rental property for their own use in the

event they do so in accordance with section 49. In this case the Landlord relies on section 49(5) which reads as follows:

(5)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.

[emphasis added in bold italics]

In this case, the Landlord claims he is selling the rental building to his son. Although the hearing commenced in December 2022, it did not complete until April 2023. Some four months later the proposed sale had yet to complete and the Landlord remained the registered owner. The Landlord and his son testified that the sale had been held up as they had yet to agree on a purchase price, and that the purchase price was to consider any capital gains tax to be paid by the Landlord.

I was not provided a copy of the contract of purchase and sale, although both the Landlord and his son, the prospective purchaser, testified that there were no conditions of sale, save and except that the property be vacant.

Although the Landlord's son and his family have apparently moved into the other units of the rental building, the Landlord claims he continues to pay the utilities, insurance and taxes and has "lost \$12,000.00". It is unclear why the son, who is currently occupying most of the rental building, is not assuming, or at least assisting with, these costs.

To be binding a contract requires three components: offer, acceptance and consideration (usually in the form of a deposit). While the Landlord and his son may

have agreed in principal to the prospective sale, there does not appear to be any consideration for this proposed sale.

As noted in section 49(5) of the *Act*, for a Landlord to issue a 2 Month Notice to End Tenancy for Landlord's Use in the event of a sale of the property, *all conditions upon which the sale depends must have been satisfied*. The sale price is clearly a condition upon which a sale depends, and which is apparently holding up this sale. I find that the Landlord and the prospective purchaser have not reached an agreement on this crucial component of a sale, namely the price to be paid for the property. As such, I find that in this case, all conditions upon which the sale depend *have not been satisfied*.

I therefore grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

Should the Landlord and his son complete their negotiations and agree upon a sale price, and enter into a formal contract of purchase and sale, the Landlord may reissue a 2 Month Notice. Alternatively, should the sale complete and B.B. become the registered owner, B.B. may issue a notice pursuant to section 49.

Although the Tenant and her counsel aptly raised the issue of good faith, I find it unnecessary to consider whether the Notice was issued in good faith as I am not satisfied all the conditions of sale upon which the sale depends have been satisfied. I find this to be a crucial finding which make further consideration of the Landlord's motives and intentions unnecessary. I note however, that the Landlord's son failed to attend the continuation of the hearing and provide further testimony as to his intentions with respect to the property. As noted in Policy Guideline 2A, "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". From the minimal evidence provided the rental property appears to be of sufficient size as to accommodate B.B.'s family and continue with the tenancy.

Conclusion

The Tenant's request for an Order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

Having been successful in her application, the Tenant is entitled to recover the filing fee. Pursuant to section 72 I authorize the Tenant to reduce her next month's rent by \$100.00 as compensation for this fee.

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: May 30, 2023

Residential Tenancy Branch