



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDCL-S, LRSD, FFL, CNL, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask us for the following orders against the landlords.

1. Cancellation of a Two-month Notice to End Tenancy for Landlords' Use, issued on or about 22 September 2023 [the 'Notice']
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords also applied to the RTB for Dispute Resolution. They ask us for the following orders against the tenants.

1. Exclusive possession of the rental unit in favour of the landlords.
2. Compensation in the amount of \$11,831.34 for losses incurred as a result of the tenants refusing to comply with the Notice [the 'Mortgage Claim'].
3. Retention of the tenants' security deposit in the amount of \$1,000.00 [the 'Deposit'].
4. Reimbursement for the \$100.00 filing fee for this application.

There are two groups of landlords who applied for dispute resolution: the former owners of the rental unit [the 'Sellers'] and the current owners of the rental unit [the 'Buyers'].

Both groups of landlords appeared at the hearing of these applications, along with advocates. The tenants also appeared.

This hearing was conducted *via* teleconference: we heard only the voices of those who participated in this hearing. The parties' oral statements to us in this hearing were made neither under oath nor affirmation: we exercised our discretion under section 74 of the Act to not administer any oaths as part of this relatively informal and expeditious teleconference.

Note that we refer to the participants in this dispute in the plural form, even though a party may be an individual. We do this in adoption of the BC Public Service Agency's guidelines, 'Words Matter: Guidelines on Using Inclusive Language in the Workplace' [updated 18 May 2018].

Issues to be Decided

Were the Sellers legally empowered to issue the Notice?

Was there any reason in law or justice for the tenants to have continued to reside in the rental unit after the Buyers purchased it?

Are the landlords entitled to retain the Deposit?

Should either party reimburse the other for the cost of filing their application?

Background and Evidence

The middle-aged tenants have lived in this rental unit for the past three years with their teenaged son (whom the tenants describe as Deaf, and who attends special schooling to accommodate this). They pay \$2,000.00 each month in rent.

In May last year, the Buyers contracted with the Sellers to buy this rental unit. The Buyers knew that the tenants were residing in the unit as tenants. But the Buyers planned to live in the unit as their own home.

Accordingly, the Buyers instructed the Sellers to issue the Notice. In drafting the Notice on or about 18 September 2023, the Sellers:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 30 November 2023; and
5. stated the basis for the Notice that:
 - a. all of the conditions for the sale had been satisfied; and
 - b. the Buyers had asked the Sellers, in writing, to give the Notice because the Buyers intended in good faith to occupy the unit.

The Sellers also attached to the Notice a copy of the contract of purchase and the Buyers' written request for the Sellers to issue the Notice

The tenants acknowledge that they received the Notice on 22 September.

Analysis

We have considered all the statements made by the parties and the documents to which they referred us during this hearing. And we have considered all the arguments made by the parties.

In writing this decision, we are mindful of the nature and volume of other applications to the RTB for access to limited hearing time. Parties are given an opportunity to participate in a focused and time-limited hearing, and the Director must carefully allocate resources in hearing disputes and writing decisions. As a result of the above, we will provide below only minimal reasons for our decision, sufficient to understand our reasoning.

Were the Sellers legally empowered to issue the Notice?

When arguing to us their position, the tenants had a difficult time trying to articulate *why* we ought to cancel the Notice. The tenants insisted that they, 'have rights too'. But, eventually, the tenants clarified their central issue, which was that only the Buyers were lawfully permitted to issue this Notice (not the Sellers). And so, because the Sellers issued the Notice, it is deficient and must be cancelled.

The Buyers responded by telling us that the definitions of 'landlord' under the Act include an agent of the landlord, which (they said) in this case was the Sellers. They also argued that the Notice itself (a form created by the RTB) permits the Sellers to act as agents for the Buyers in issuing the Notice.

We accept that section 49 (5) of the *Residential Tenancy Act* [the 'Act'] empowered the Sellers to issue this Notice. This section reads (in part) that a landlord may end a tenancy in respect of a rental unit if:

1. the landlord [in this instance, the Sellers] enters into an agreement in good faith to sell the rental unit;
2. all the conditions on which the sale depends have been satisfied; and

3. the purchaser [here, the Buyers] asks the landlord, in writing, to give notice to end the tenancy on the ground that the purchaser is an individual and the purchaser intends in good faith to occupy the rental unit.

We find that is what occurred in this case: the Sellers agreed to sell the unit to the Buyers; the parties completed the sale; and the Buyers requested in writing that the Sellers issue the Notice.

The evidence of the Notice itself satisfies us that it is a valid notice under section 52 of the Act, and there is no basis to cancel it.

We asked the parties for their positions on when a reasonable period to end this tenancy would be in the event that the Notice was upheld. The tenants argued two months was reasonable in their circumstances (as recounted above). The landlords argued for a few days.

We find that, in consideration of the tenants' circumstances and the positions of the parties, one month is reasonable.

Was there any reason in law or justice for the tenants to have continued to reside in the rental unit after the Buyers purchased it?

The Buyers' argued their Mortgage Claim as follows:

1. since purchasing this unit, the Buyers have been paying a mortgage on the property in the amount of \$1,866.56 twice *per* month;
2. while they have received the rent from the tenants, the Buyers have been paying the mortgage (which exceeds the revenue from the rent) but getting no benefit from doing so, *i.e.* they have not been able to live there;
3. had the tenants complied with the Notice, then the Buyers could have moved into their new home as of 1 December;
4. because the tenants refused to comply with the Notice, and because the Buyers have had to pay more to own the unit than it has generated in revenue, the tenants ought to be liable to the Buyers for the difference; and
5. this difference amounts to \$11,831.34, covering the period of 30 November 2023 to the date of the hearing of this application.

Essentially, the Buyers argue that the tenants have been unjustly enriched by refusing to comply with the Notice. In support of this, the Buyers direct us to paragraphs 36 to 40 of *Kerr v. Baranow*, 2011 SCC 10 (CanLII), [2011] 1 SCR 269.

We have considered these paragraphs, and the test that the court sets out therein. Having done so, we have no hesitancy in finding that:

1. the Buyers (in buying this rental unit with the tenants residing in it) effectively gave the tenants something that the tenants received and retained, and which can be restored to the Buyers, *viz.* possession of the rental unit; and
2. because the tenants received possession of the rental unit, the Buyers have correspondingly been deprived of that possession.

But, as the court requires us to also consider, was there any reason in law or justice for the tenants to have retained possession of the rental unit? The court notes (in paragraph 41) that one such reason can be a contract.

We accept that the tenancy agreement that existed between the tenants and the landlords of this unit to be undoubtedly in the nature of a contract. The Buyers purchase of the unit did not nullify this contract. That contract, therefore, is a reason for the tenants to have retained possession of the unit – until the tenancy ends.

When the Buyers purchased this rental unit, it is apparent that they understood the unit had tenants living in it. And while the Buyers instructed the Sellers to end the tenancy on their behalf, it also ought to have been within the contemplation of the Buyers that the tenants might oppose ending the tenancy. That is what occurred.

We are not persuaded that the delay between the end date stipulated in the Notice and the hearing of the tenants' dispute of that Notice is a fault of the tenants. Rather, it is an institutional delay: there was nothing to suggest that the tenants had a hand in determining when their application would be heard. And while both parties may be frustrated with the delay in having this dispute heard, it cannot be said (in these circumstances) to be the fault of either party.

We are not persuaded that the tenants have been unjustly enriched. Rather, they availed themselves of a process under the Act to dispute the end of their tenancy. Any delay occasioned by that process is not at the feet of the tenants.

We dismiss the Mortgage Claim without leave to re-apply.

Are the landlords entitled to retain the Deposit?

The landlords did not argue this issue in this hearing, and so we dismiss it with leave to re-apply.

Should either party reimburse the other for the cost of filing their application?

We see no reason why the parties should not bear their own costs for their applications.

Conclusion

We make an Order of Possession in favour of the landlords. This order is effective at 1 p.m. on 29 February 2024, and the landlords must serve a copy of it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with our order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

This decision is made on authority delegated to us by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: 29 January 2024

Residential Tenancy Branch