



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNL OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were provided a full opportunity to provide affirmed testimony, to present evidence and make submissions.

Preliminary Issue – Landlord Evidence not provided to tenant

Rule 3.15 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires a respondent's evidence to be received by the applicant and the Branch not less than 7 days before the hearing. The landlord submitted a 38 page evidence package that was received by the Branch on May 19, 2017; however, the landlord did not provide a copy of this package to the tenant. The landlord was provided an opportunity to request an adjournment to the hearing; however, the landlord wished to proceed with the hearing as scheduled. The landlord's 38 page evidence package was not accepted or considered in this decision.

Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee?

Background & Evidence

The tenancy began April 1, 2016 and the original lease was for a 1 year fixed term expiring on April 1, 2017. The tenancy agreement stipulates the tenancy may continue on a month-to-month basis or another fixed length of time.

The landlord served the tenant with a 2 Month Notice on April 4, 2017. The Notice has an effective date of June 30, 2017. The ground for issuing the 2 Month Notice is that all the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenant is disputing the 2 Month Notice and argues that the landlord agreed, in writing, first to an additional 12 month lease and then an additional 6 month lease. In support of his argument, the tenant provided a series of e-mail exchanges between himself and the landlord by which the landlord first offered to extend the lease for an additional 12 months at the same rental rate/terms and then offered a 6 month extension. The tenant further argues that at the start of the tenancy, the landlord verbally assured him that the property would not be sold after the initial 12 month fixed term.

The landlord submits that the original 12 month fixed term lease expired on April 1, 2017 and the tenancy is now continuing on a month-to-month basis. The landlord submits that close to the maturity date of the original lease, the tenant was advised the property was being listed to feel out the market. There were discussions with the tenant about continuing on the tenancy at the same terms but a new fixed term lease was never confirmed or formalized. The property has sold and the purchaser has provided written notice that he intends to occupy the rental unit.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

The tenant did not dispute that the property has sold or that the purchaser provided written notice to the landlord that the purchaser intends in good faith to occupy the rental unit. Therefore, I find the grounds for issuing the Notice are valid. The dispute in

this case was over whether or not the parties entered into a new fixed term tenancy agreement which would prevent the landlord from issuing a 2 Month Notice with an effective date prior to the end of the fixed term.

I find that the evidence does not support the tenants' argument that the parties had entered into a new fixed term tenancy. The e-mail exchanges between the parties do not form a binding contract and I find they were nothing more than offers communicated to the tenant which were not confirmed or formalized in any written agreement. The tenant's argument that there was a verbal agreement made by the landlord to not sell the property is also not enforceable. If the tenant required a longer lease he could have negotiated this at the start of the tenancy rather than entering into only a 1 year fixed term agreement.

The tenants' application to cancel the 2 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the tenant was not successful in this application, the tenant is not entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on June 30, 2017**. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 26, 2017

Residential Tenancy Branch