



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, CNL, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for landlord's use of property pursuant to section 55.

The tenant's applied for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties indicated that they were aware of the issues and were prepared to begin the hearing.

Preliminary issue(s)

The tenants filed an amendment to the application seeking an order cancelling a 2 Month Notice dated October 19, 2017.

After lengthy discussions, the landlord clarified that he had mistakenly issued an incomplete 2 Month Notice dated September 30, 2017 which was subsequently replaced with a second 2 Month Notice dated October 19, 2017. Both parties confirmed service of this 2 Month Notice which was served in person on October 19, 2017. The hearing for both applications shall proceed based upon this 2 Month Notice.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for landlord's use?
Are the tenants entitled to an order cancelling the 2 Month Notice?
Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on November 24, 2016 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated November 28, 2016. The monthly rent is \$300.00 payable

Both parties confirmed that the landlord served the tenants with a 2 Month Notice dated October 19, 2017 in person on October 19, 2017. The 2 Month Notice sets out an effective end of tenancy date of December 19, 2017 and one reason selected as:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenants dispute the landlord's good faith as following service upon them of the 2 Month Notice on October 19, 2017, the tenants were served multiple notice(s) for house viewings as well as two separate notice(s) for a house inspection.

The landlord provided affirmed testimony that the sale of the house was accepted and all of the conditions of the sale were satisfied on October 17, 2017 which led to the subsequent service of the 2 Month Notice on October 19, 2017. The landlord relied solely on a copy of a document titled, "TENANT OCCUPIED PROPERTY- BUYERS NOTICE TO SELLER FOR VACANT POSSESSION".

The tenants argued that this document referred to by the landlord is dated November 9, 2017 and is confirmation that the landlord's claim that all of the conditions of the sale were satisfied and that a written request was made by the purchaser led to the issuance of the 2 Month Notice.

The landlord argued that all of the conditions of the sale were satisfied and that a written request was received by the purchaser on October 17, 2017.

Analysis

Subsection 49(5) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord enters into an agreement in good faith to sell the rental unit, all the conditions on which the sale have been satisfied, the purchaser has asked the landlord, in writing to give notice to end tenancy as the purchaser or a close family member intends in good faith to occupy the rental unit. .

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice.

In this case, both parties confirmed that a 2 Month Notice was served in person to the tenants on October 19, 2017. Neither party raised any issues with any of the noted details of the 2 Month Notice itself.

The issue disputed is whether the landlord had completed the sales agreement and that all of the conditions of the sale were satisfied. The landlord has stated that a written request was received from the purchaser on October 17, 2017 which led to the issuance of the 2 Month Notice dated October 19, 2017. The tenants have argued that this is not possible as notice(s) for viewings and inspections were served by the landlord.

A review of the landlord's evidence shows that he received a document titled, "TENANT OCCUPIED PROPERTY- BUYERS NOTICE TO SELLER FOR VACANT POSSESSION" dated November 9, 2017. I find that this is the written notice provided by the purchaser to the seller after all of the conditions of sale were satisfied. This is in direct contradiction of the landlord's direct testimony. I also note that this same document refers to a Contract of Purchase and Sale dated October 27, 2017 between the two parties. As such, I find that the landlord was pre-mature in serving the 2 Month Notice dated October 19, 2017 as the written request for vacant possession was dated November 9, 2017 which does not pre-date the 2 Month Notice. The 2 Month Notice dated October 19, 2017 is set aside and is of no effect. The tenancy shall continue.

The landlord's application is dismissed without leave to reapply. The tenants' application is granted.

The tenants' have been successful are entitled to recovery of the \$100.00 filing fee. As the tenancy is continuing, I authorize the tenants to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The 2 Month Notice dated October 19, 2017 is set aside and the tenancy shall continue.

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 04, 2018

Residential Tenancy Branch