



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, OT

Introduction

This hearing was convened pursuant to the Tenant's Application for Dispute Resolution made on January 4, 2022. The Tenant applied for the following relief pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 22, 2021 (the Two Month Notice);
- an order that the Landlord comply with the Act, Residential Tenancy Regulation, and/or the tenancy agreement; and
- other relief.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing and was assisted by SM, an agent. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding and evidence by registered mail on January 14 and March 16, 2022. The Landlord acknowledged receipt of these documents.

The Landlord testified that the documentary evidence upon which he intended to rely was served on Tenant by attaching a copy to the Tenant's door on March 22, 2022. The Tenant acknowledged receipt of these documents.

Neither party raised any issues with respect to service or receipt of the above documents during the hearing. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution hearings. The parties confirmed they were not recording the hearing.

The parties were in attendance and were prepared to proceed. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most critical issue to address is whether the tenancy will continue, which is not related to the remainder of the claims. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the request for an order cancelling the Two Month Notice. Considering my findings below, the remaining requests are dismissed without leave to reapply.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Two Month Notice?
2. If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties agreed the tenancy began on March 1, 2016. Rent of \$1,759.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$825.00, which the Landlord holds.

The Landlord testified the Two Month Notice was served on the Tenant by attaching a copy to the Tenant's door on December 22, 2021. The Application acknowledges receipt of the Two Month Notice on that date.

The Two Month Notice was issued on the basis that the Landlord or the Landlord's spouse will occupy the rental unit. However, during the hearing, the Landlord requested that the Two Month Notice be amended to reflect that it was issued because all the conditions for the sale of the property have been satisfied and the purchaser has asked the Landlord, in writing, to give notice to end the tenancy on one of the basis that 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. The Tenant did not object to this amendment.

The Landlord testified that he has entered into a Contract for Purchase and Sale (the CPS) with respect to the rental property. A copy of the CPS, dated June 29, 2021, was submitted into evidence.

The Landlord also testified that he subsequently received a request from the purchaser to issue a notice to end tenancy. A copy of the written request, dated December 9, 2021, was submitted into evidence.

The Landlord testified that he understands the purchaser intends to move into the rental unit. The Landlord also testified that the property is no longer listed on the Multiple Listing Service, that the deposit has been paid and is being held in trust, and that the purchaser has threatened legal action if the sale does not complete.

The Landlord stated he has been "completely transparent and honest" in his dealings with the Tenant and is merely trying to do everything by the book.

In reply, the Tenant question the validity of the CPS suggesting it was "flawed" and "flimsy". The Tenant submitted that he does not believe the CPS can be relied upon because it does not include the contact information of the parties and would not be accepted by a bank. The Tenant also testified that the CPS and purchaser's request are flawed because they were not witnessed by "a commissioner of oaths".

The Tenant testified the CPS is being used to "coerce" and make him feel "overwhelmed". The Tenant stated the CPS prejudices him.

The Tenant also noted that various documents provide different addresses for the purchaser.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

In this case, the Two Month Notice was issued on the basis that the Landlord or the Landlord's spouse would occupy the rental unit. However, based on the evidence submitted, it appears that the Landlord should have issued the Two Month Notice on the basis that all the conditions for the sale of the property have been satisfied and the purchaser has asked the Landlord, in writing, to give notice to end the tenancy on one of the basis that 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.

Section 68(1) of the Act permits an arbitrator to amend a notice to end tenancy if the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice. In this case, the Tenant did not object to the amendment. In any event, I find it would be reasonable to amend the Two Month Notice as requested. I find it is more likely than not that the Tenant, who submitted evidence of the sale of the property from the Landlord to the purchaser, knew or ought to have known the basis for the Landlord's desire to end the tenancy.

After careful consideration of the evidence and submissions of the parties, I find that the Landlord has provided sufficient evidence to show, on a balance of probabilities, that the conditions for the sale of the property have been satisfied and the purchaser has asked the Landlord, in writing, to give notice to end the tenancy on one of the basis that the purchaser intends in good faith to occupy the rental unit. I accept that the CPS submitted into evidence created a valid and binding agreement between the Landlord and the purchaser. I also accept that the purchaser asked the Landlord, in writing, to issue the Two Month Notice on his behalf, and find it is more likely than not that the purchaser intends to occupy the rental property.

These findings are supported by the CPS, the addendum to the CPS, the purchaser's request to issue a notice to end tenancy, and the Two Month Notice. I also accept the Landlord's concerns regarding potential legal action by the purchaser if the transaction does not complete.

On the other hand, I find the Tenant's evidence lacking. The Tenant's evidence consisted primarily of his beliefs with respect to the validity of documents and the legal requirements for the transfer of real property. The Tenant's statements were not supported by authorities or other evidence to suggest the purchaser does not intend to occupy the rental property.

Considering the above, I find that the Two Month Notice is upheld and that the Tenant's request to cancel the Two Month Notice is dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant an order of possession in favour of the Landlord. In this case, I have reviewed the Two Month Notice and find that it complies with section 52 of the Act. Accordingly, I grant the Landlord an order of possession, which will be effective on April 30, 2022, at 1:00 p.m.

Conclusion

The Tenant's request to cancel the Two Month Notice is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, the Landlord is granted an order of possession, which will be effective on April 30, 2022, at 1:00 p.m. The order of possession must be served on the Tenant. The order of possession may be filed in 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: April 4, 2022