

DECISION

Dispute Codes:

CNL, OPL, FF

Introduction

This hearing was convened in response to cross applications by the tenant and landlord. The tenant applied May 07, 2010 to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) and recovery of the filing fee. The landlord applied May 12, 2010 for an Order of Possession in respect to the same Notice. Both parties (MG for the tenant, and MP for the landlord) appeared at the hearing and had opportunity to be heard, provide affirmed testimony, and respond to the other party's submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant questions the good faith intent of the landlord's use of the property.

Issue(s) to be Decided

Is the landlord's Notice to end valid?

Is the landlord's motive for ending the tenancy the landlord's primary motive?

Should the Notice issued April 25, 2010 be cancelled?

Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began September 01, 2007. Rent is \$750 payable on the first of each month. The parties submitted an abundance of evidence. The following relevant facts are undisputed by the parties:

- The Tenant was given the Notice to End on April 25, 2010, with an effective date of June 30, 2010.
- The rental unit is a suite in an apartment building.

- The tenancy relationship of the parties has been acrimonious, fraught with complaints, legal actions and disagreement.
- MP is the shareholder of the landlord entity / corporation.
- MP owns at least 50 rental units.

The Landlord has stated the following reason on the Notice for ending the tenancy:

The rental unit will be occupied by the landlord or the landlord's spouse or close family member of the landlord or the landlord's spouse.

The landlord provided evidence that he is the sole individual shareholder in the corporate landlord entity. The landlord's submission stated he intends to personally occupy the rental unit, in good faith. He submitted that behind the intention to occupy the rental unit was, "personal reasons" – and for these reasons he requires a "small suite, with street exposure", and due to this requirement, in part, the tenant's suite is the most suitable.

The landlord testified that his "personal reasons" are that he is undertaking a break from his problem marriage because of longstanding ongoing marital problems, and therefore he requires a suite for only himself. He testified that he also suffers from depression and cannot reside in a suite which is facing north. He testified that what he intended by "street exposure", in this matter, was to say he could not reside in a rental unit in this building with a northern orientation or "north facing", as it would not provide the same required level of light as a "west", or street facing unit in this building.

The landlord's testimony is that all matters equal, his choice of suites was also motivated by his determination that the tenant is not content residing in this building as indicated to him by the tenant's "constant" complaints of noise from tenants above, below, in nearby buildings, the café in the building, and his apparent displeasure with the landlord (MP): the tenant advancing legal action against the café, and a human rights action against the landlord. The landlord provided a summary of document evidence in support of the tenant's issues and the legal actions, and referred to the tenant's evidence as being complementary. The landlord also testified that a currently vacant suite in the residential property will be undergoing renovations, but also the suite

is unnecessarily large and would forego a greater loss of revenue. The landlord went on to testify that a recent vacancy (rented June 1, 2010) was also not suitable as it was below grade and dark.

The landlord submitted a list of services and utilities, purported to be in the landlord's name, destined for the outset of the new month and his occupancy. The landlord has not cashed the tenant's rent cheque for June 2010 as per tenant's compensation under Section 51 of the Act.

The tenant alleges the following;

- The landlord (MP) will not, may not, nor proven he will, occupy the rental unit.
- The landlord did not stipulate the proper *reason* or ground for ending the tenancy *in* the Notice to End form, given the landlord is not an individual, but rather an individual owning all the shares in the landlord corporation.
- The landlord did not issue the Notice to End in good faith: with a good faith intention.
- The landlord's motive for requesting his suite is in retaliation for him (MG) filing a human rights action against him.
- The landlord owns many other suites, yet has "targeted" his for occupancy.
- The landlord is not credible. On hearing the landlord's testimony: he has not provided proof of his marital problems or depression.

The tenant testified that his level of satisfaction of his rental unit is irrelevant, and he wants to remain in the unit. He argued as to why the landlord has not disclosed his personal problems / matters previously, or in respect to the Notice to End.

The tenant provided a quantum of evidence: copies of his legal proceedings against the landlord, and the neighbouring café business, as well as evidence of his ongoing issues with the landlord in respect to his tenancy. The tenant testified that this shows the landlord's true motive behind his intention to occupy his rental unit - arguing that he issued the Notice to End in retaliation for the tenant filing a human rights complaint against the landlord.

Analysis

A landlord may end a tenancy for their use of the property. The Landlord (MP) intends to occupy the rental unit personally and on his own for personal reasons and has chosen the tenant's rental unit for his purpose for personal reasons, and for reasons, which can be characterized as proverbial good intentions of alleviating the tenant of a troublesome tenancy.

The reason given to end the tenancy in the Notice is based upon section 49(3) of the Act which provides:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith, to occupy the rental unit.

In respect to the landlord's stated ground for ending the tenancy, the tenant argued that the landlord is a family corporation therefore in order for the Notice to be valid the landlord's Notice must be based upon 49(4) of the Act which provides:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

In this matter I find that MP is one and the same landlord and a qualifying individual in a family corporation and that the tenant knew or should have known this, and in the circumstances I find it is reasonable to amend the Notice, and the Notice is thus amended to reflect (3) and (4) of Section 49.

I must determine whether the Landlord has met the criteria of section 49(3) or (4) which I characterize as a two part test: firstly, that the landlord truly intends to personally use or occupy the rental unit for himself; and secondly, that the Landlord has shown he does not have an ulterior motive for seeking to have the tenant vacate the unit.

On the preponderance of the evidence and on the balance of probabilities, **I find** the landlord has met the first test. I accept the landlord truly intends to personally occupy the rental unit.

The tenant brought into question the landlord's motive for seeking to have him vacate the residential premises in retaliation for filing a human rights action and therefore targeting him. The landlord confirmed that in their determination as to which rental unit to request he considered several factors - in part, the tenant's seeming dissatisfaction with the tenancy - indicated to the landlord by the tenant's human rights action, and other matters of contention stemming from the tenancy. However, I note that the suite first had to meet size and ambient light requirements for the landlord's "personal reasons". The landlord did not attempt, in their testimony or their evidence, to shield or downplay the parties' acrimonious relationship, including the human rights action filed by the tenant. In fact, the landlord provided this very evidence, if not in the amount the tenant provided. I find that if the landlord had attempted to downplay or hide the problems between him and the tenant it would have inferred dishonesty or a hidden agenda.

When the "good faith" intent of the landlord is brought into question the burden is on the landlord to establish that they truly intend to do what the landlord indicates on the Notice to End, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy, as the landlord's *primary* motive. If an ulterior motive exists, I do not believe that the ulterior motive is the landlord's *primary* motive for ending the tenancy. I believe the primary motive is the reasons stated in the Notice to End Tenancy, and the motive to which the landlord testified: the suite is small, and has the required exposure and requires the suite for personal reasons. As a result, I find the landlord has met the requirements of having acted in "good faith" in issuing the notice, and that the landlord intends in good faith to personally, as the landlord and sole shareholder of the corporate landlord entity, occupy the rental unit.

I accept and find the landlord's Notice to End Tenancy for Landlord's Use of Property, valid. The landlord intends in good faith to occupy the rental unit and that he will provide the tenant with one month's rent to which they are entitled.

Therefore, the landlord's Notice to End dated April 23, 2010, with the effective date of June 30, 2010 is upheld. The landlord is entitled to an **Order of Possession**. The landlord will serve the tenant with the Order of Possession and the tenancy will end in accordance with the Order. The tenant's application effectively is **dismissed**.

The landlord has been successful in their application and is entitled to recover the filing fee from the tenant. The landlord may deduct **\$50** from the tenant's security deposit in satisfaction of this award.

Conclusion

I grant an Order of Possession to the landlord **effective June 30, 2010**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant's application is **dismissed** without leave to reapply.

The landlord may deduct **\$50** from the tenant's security deposit.

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*.