



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHERWOOD CRESCENT MANOR LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL OPT O

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on January 12, 2015, to cancel a Notice to end tenancy issued for landlord's use of the property; to obtain an Order of Possession for the Tenant, and other reasons.

The hearing was conducted via teleconference and was attended by the Landlord, her Agent (hereinafter referred to as Agent), and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by Tenant. The Landlord did not submit documentary evidence in response to this application.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Should the 2 Month Notice issued December 29, 2015 [sic] be cancelled or upheld?
- 2) If cancelled, does the Tenant require an Order of Possession?

Background and Evidence

The Tenant testified that she entered into a written month to month tenancy, with the previous owner that began on July 1, 2014. Rent is payable on the first of each month in the amount of \$650.00 and in June 2014 the Tenant paid \$325.00 as the security deposit.

The Tenant submitted into evidence a copy of the 2 Month Notice issued December 29, 2015 [sic] and a copy of the Decision dated November 14, 2014 that pertained to the Tenant's application to cancel a 2 Month Notice issued by the former landlord on August 27, 2014.

The most recent 2 Month Notice to end tenancy was issued December 29, 2015, pursuant to section 49 (3) of the Act for the reason that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The Landlord testified that she is the sole owner of the corporation who is listed as the Landlord. She stated that she signed the papers to finalize the purchase the property on December 17, 2014; however, she did not know the exact date the property title transferred to her corporation.

The Landlord described the property as having two buildings; one is an 85 unit complex care facility and a smaller building with 16 rental units. The Tenant currently resides in the 16 until building and is the last remaining tenant.

The Landlord stated that they issued the Tenant the 2 Month Notice on December 29, 2014, because she wants to live in that rental unit while they renovate the building, market and manage the other units during application processes for new occupants. The Landlord submitted that she is the sole owner/director of the limited company and her Agent who was in attendance at this hearing is her son who is employed by the Limited Company.

The Landlord described the renovations as consisting of the installation of: new windows, doors, flooring, kitchen, bathroom, plumbing, fire upgrades, and electrical upgrade. Upon further clarification she stated that they plan to remove bath tubs and replace them with handicap showers in some of the units, and replace cabinets, toilets and sinks. She argued that they have acquired permits to conduct the renovations and noted that she wants to live in the Tenant's unit.

The Landlord testified that she currently resides in a house with her husband, in a neighbouring city, and that she would be the only one moving into the Tenant's unit. When asked why she could not reside in one of the vacant units the Landlord argued that they are in such disrepair that she cannot live in them. She stated that the Tenant's unit had been recently renovated and was the most suitable for her to reside in.

The Agent testified that the Landlord's presence is required to manage this project. He argued that the 15 other units in this building, which are all vacant, are in such a state of disrepair, due to the renovations, that the Landlord cannot occupy them. He submitted that 14 units were vacant at the time they purchased the property and the 15th unit was vacated approximately 1 week prior to this hearing near the end of January 2015.

The Agent argued that the work that is happening is not construction; rather it is “renovations” and is required because the building could not provide sustainable housing in the condition it was in. He stated that the previous owner had allowed them to be on site since May 2014, as contractors, prior to the purchase of the property. He indicated that this work was part of a “phased in project” involving work to start and stop at various stages. He noted that the work had stopped for a while and then started up again about 2 -3 weeks ago. He submitted that this will be a 6 – 8 month project.

The Tenant confirmed that she received the Notice prior to the end of December 2014 and that she knew there had been a clerical error made in the date the Notice was signed as it stated 2015 instead of 2014.

The Tenant testified that she was disputing the 2 Month Eviction Notice because she intends to live in this rental unit long term. She submitted that she had checked with the City and they told her that the property title did not transfer in their records until January 6, 2015, and if that was the case the Notice would be invalid because they were not the Landlords on December 29, 2014. The Tenant argued the Landlord started the work prior to acquiring permits and the City had issued a stop work order. She submitted that the permits were not issued until January 21, 2015.

The Tenant stated that Landlord owns eight other care facilities and she is rarely at her rental unit property so she questioned why she would want to reside there now. The Tenant argued that the Landlord could choose to reside in unit # 70 which was recently vacated. She submitted that she had been inside that rental unit when it was occupied and it was nicer than her unit. She argued that the construction work had not started in that unit as of yet so if the Landlord truly intended to occupy a unit at this building she could reside in unit # 70.

In the November 14, 2014 Decision the Arbitrator recorded the under the Background and Evidence section as follows:

The rental units are located on the landlord's 11 acre property in Abbotsford. There are assisted living facilities, seniors housing and subsidized housing units on the property, but the subject rental units are not part of the assisted living or subsidized housing facilities. The rental units are referred to by the landlord as “the Cottages”. The tenants said the rental units are located in two buildings containing 15 self-contained, single storey semi-attached units.

The following was written at paragraph # 4 on page 2 of the November 14, 2014 Decision:

The tenant said that after these proceedings were commenced she learned that the corporate purchaser of the rental property intends to make some minor renovations to the units and then offer them for rent to senior citizens.

Prior to the conclusion of this hearing the parties were given the opportunity to settle these matters. Unfortunately the parties were too far apart with the amount of compensation that the Tenant would accept in order to mutually agree to end this tenancy. As a result the matter reverted to an arbitration to determine the matters pertaining to the Tenant's application.

Analysis

Section 49(3) of the Act stipulates that 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.

Section 49(4) of the Act stipulates that 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.

Section 49(1) of the Act provides definitions applicable to Notices issued under Section 49 of the Act as follows:

"close family member" means, in relation to an individual,

- (a) the individual's father, mother, spouse or child, or
- (b) the father, mother or child of that individual's spouse;

"family corporation" means **a corporation** in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), **an individual** who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), **a family corporation** that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

The 2 Month Notice issued December 29, 2015 [sic], was issued pursuant to section 49 (3) of the Act for the reason that *an individual* landlord intended on occupying the rental property.

The undisputed evidence is that the Landlord is a corporation owned solely by M.M. Accordingly, the Landlord would be a “family corporation” as defined by section 49 of the Act. As such the 2 Month Notice would need to be issued in accordance with section 49(4) of the Act 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.

Based on the above, I find the 2 Month Notice issued December 29, 2015 [sic] to be invalid as the landlord is a corporation and not an individual landlord, as defined by section 49 of the Act. Accordingly, I uphold the Tenant’s application and the 2 Month Notice is hereby cancelled.

Conclusion

I HEREBY Cancel the 2 Month Notice to end tenancy issued December 29, 2015 [sic] and this tenancy continues until such time as it is ended in accordance with the Act.

The Tenant currently has legal possession of the rental unit, in accordance with the Act. Therefore, the Tenant’s request for an Order of Possession is moot.

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: February 03, 2015

Residential Tenancy Branch

