



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER LUXURY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDC, OLC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) 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;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the respondent to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the respondent pursuant to section 72.

The tenants attended the hearing. The respondent's agent attended the hearing and confirmed he had authority to act on behalf of the respondent.

At the commencement of the hearing, I informed the parties of my concern that the respondent was not a proper party to this application.

Issue(s) to be Decided

Is the respondent a proper party to this application?

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 submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The tenants vacated the rental unit at the end of April as a result of the 2 Month Notice. The 2 Month Notice was issued 31 March 2015 and set out an effective date of 31 May 2015. The 2 Month Notice set out that it was given 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 believe that the possession date for sale of the rental unit occurred at some point in June 2015. The tenants believe the new purchaser to reside outside of Canada.

The respondent is a property management company that began working for the purchaser on or after 1 June 2015. On or after 1 June 2015, the property management company on behalf of the purchaser entered into a tenancy agreement with new tenants.

The parties agree that the respondent was not an agent for the former landlord. The tenant NM testified that the tenants had no dealings with the respondent until after the end of the tenancy. The agent testified that the respondent's only dealings have been with the current owner.

Analysis

I informed the parties at the hearing that I would be unable to proceed with the tenants' application as the respondent was not a proper respondent to this application. I informed the parties that I would provide written reasons that explained my decision.

The tenants' claim is in relation to compensation for damages resulting from an improper end to tenancy. In order to show an entitlement to compensation, the tenants must show a breach of the Act, regulations or tenancy agreement.

Section 49 of the Act allows a landlord to end a tenancy for certain reasons relating to the future use of the rental unit. Pursuant to subsection 49(5) of the Act allows a landlord to end a tenancy if 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 a 2 Month Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

“Landlord” is defined in section 1 of the Act:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Section 67 allows a party to claim compensation from a respondent who causes the applicant damage or loss by virtue of the respondent's failure to comply with the Act, the regulations or a tenancy agreement.

In this situation, the agent has not caused the tenants' loss; rather, it is the acts of the purchaser or possibly the tenants' former landlord that has created the loss. The agent is not a proper respondent to an allegation of a breach of section 49 and a request for compensation pursuant to section 67 of the Act.

Subsection 51(2) provides for compensation if a landlord or purchaser does not use the rental unit for the purpose set out in the 2 Month Notice:

- (2) In addition to the amount payable under subsection (1), if
 - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
 - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[emphasis added]

From sections 49 and 51 it can be seen that the proper respondent to the tenants' application is either the purchaser or the "landlord". In this case, the tenants are alleging a breach by the purchaser of the property in that the purchaser failed to satisfy the reason set out in the 2 Month Notice. The tenants seek compensation pursuant to subsection 51(2) of the Act and, as well, compensation for damages that resulted from the improper issuance of the 2 Month Notice pursuant to section 67 of the Act.

In order for "landlord" in section 51 to be read in its grammatical and ordinary sense harmoniously with the scheme of the Act, it must be understood to be separate and distinct from "purchaser". Section 51 in its use of the word "or" indicates that it is one or the other. In this case, the agent never acted as landlord for the former owner. The only relationship the agent has is with the purchaser. The agency relationship with the purchaser is not sufficient to attract liability pursuant to section 51 of the Act.

As I mentioned to the tenants at the hearing, once they identify the proper respondent, they may use an application for substituted service in the event that they are unable to serve the purchasers in accordance with the Act. The relevant service provisions are set out in sections 71, 88, 89, and 90 of the Act. The tenants may find *Residential Tenancy Policy Guideline*, "12. Service Provisions" to be of assistance.

Conclusion

The tenants' application against the respondent is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 10, 2015

Residential Tenancy Branch

