Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GLOUCESTERSHIRE DEVELOPEMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, O

Introduction

The tenants apply to cancel a two month Notice to End Tenancy dated May 18, 2016 and for "other," unspecified relief.

At hearing the tenants confirmed there was no "other" relief sought; only the issue of the two month Notice.

All parties attended the hearing, the landlord by its agents, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord has valid grounds for the giving of the two month Notice?

Background and Evidence

The rental unit is a three bedroom townhouse in a strata development. There is a written tenancy agreement. Neither side submitted a copy. They agree that the tenancy started in February 2014. The current monthly rent is $1615.00. The landlord holds an $825.00 security deposit. They appear to agree that a pet damage deposit was paid but cannot agree on the amount.

They agree that the landlord named in the tenancy agreement is the corporate respondent G.D. Ltd.

The two month Notice has been given pursuant to s. 49(4) of the *Residential Tenancy Act* (the "*RTA*"), 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.

Mr. D.L., who describes himself as the "office manager" or "property manager" of the landlord testifies that a Mr. N.D. was the original office manager and that he took over that role in November 2016.

He says that a Mr. B.K. is the president of the respondent company and that it is he who needs to use this particular rental unit.

In response the tenant Ms. P. testifies that Mr. N.D. told her that he was the owner of the respondent company when she rented the unit through him.

She questions why the landlord would wish to occupy this particular unit when others, perhaps better suited, are available. She opines that it is because the tenants had recently been successful in defending against a rent increase (related file shown on cover page, decision rendered April 18, 2016).

She says the owner owns a number of other townhouses and apartments in the strata development.

She says she'd never heard of Mr. B.K until Mr. D.L. referred to him at this hearing.

The tenant Ms. G. testifies that she found this rental unit as a result of meeting Mr. N.D. at the store she worked at. Mr. N.D. told her he was the owner and arranged to rent this unit to them.

Mr. B.K. arrived at this point in the hearing. Though the landlord's evidence in support of the Notice had been completed, he was allowed to testify.

He describes himself as the "principle owner" and "principle shareholder" of the respondent company. He says that Mr. N.D. was only a "minor shareholder."

He confirmed that he intends to renovate his principle residence, that it will take some time and that wants to move into the subject accommodation.

He offered to provide proof of ownership after the hearing.

Analysis

The ending of a tenancy is a serious matter. It can result in the loss of accommodation that has become the home of a family. Accordingly, the *RTA* places significant restrictions on the ability of a landlord to end a tenancy. A landlord will be obliged to provide convincing and cogent evidence to support an eviction Notice.

In this case there are two reasons the Notice in question must be cancelled.

First, the landlord has filed no material in this application, but for a letter to its tenants dated November 28. 2014, naming Mr. D.L. as its office manager.

The burden of proving that the Notice is a valid notice initially falls on the landlord in applications of this sort. It is required to provide the respondent tenants with particulars of the grounds for the Notice so that the tenants can properly prepare for the hearing.

The landlord has failed to do so here. It has failed to name the person intending to occupy the premises or give any indication of that person's relationship to the landlord.

As a result, the tenants have been unfairly taken by surprise, having only discovered that essential information at this hearing, with no opportunity to investigate, to either confirm it or present contradictory evidence.

Mr. B.K.'s offer to provide official documentation corroborating his testimony comes too late. That documentation should have been submitted to the Residential Tenancy Branch and a copy given to the tenants well before the hearing, in accordance with the Rules of Procedure.

Secondly, the landlord has not established that it is the owner of the rental unit, that it is a family corporation or that Mr. B.K. is the sole shareholder.

While G.D. Ltd. is stated to be the landlord named in the tenancy agreement, for the purposes of s. 49 of the *RTA*, the term "landlord" has a restricted meaning. "Landlord" is defined as:

"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

The landlord giving a two month Notice under s. 49 must be an owner or part owner, not the agent of the owner.

At the previous hearing regarding the rent increase, and at which Mr. D.L. was in attendance, it was noted by the arbitrator that Mr. D.L. described himself as the office manager of the landlord company (G.D. Ltd.) and that the landlord company was agent for an unnamed “landlord owner” of the rental unit. The landlord G.D. Ltd. has not proved at this hearing that it is the owner of the rental unit in question and the admission made by Mr. D.L. in the previous hearing would indicate that it is not.

Section 49(1) defines “family corporation” as;

"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;

Mr. B.K. testified that he was only the “principle shareholder” and indicated that others, at least Mr. N.D., was a “minor shareholder.” Mr. B.K. has not established that all shares, nor all voting shares in G.D. Ltd. are owned by him.

There is no indication that Mr. N.D., or any other shareholder, is Mr. B.K.’s brother or close family member.

For these reasons, the Notice cannot be upheld as a valid Notice to End Tenancy and I hereby cancel it.

Conclusion

The tenants' application is allowed. The two month Notice to End Tenancy dated May 18, 2016 is hereby cancelled.

There is no request to recover any filing fee.

This decision was rendered orally after hearing and 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: June 29, 2016

Residential Tenancy Branch