



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FORT LANGLEY WINE COMPANY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF, O

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72; and
- an "other" remedy.

Both tenants appeared. Both individual landlords appeared (the landlord WS and the landlord TB). The individual landlords appeared on behalf of the corporate landlords. Those in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlords admitted service of the tenants' dispute resolution package. The tenants admitted service of the 2 Month Notice.

The tenants did not set out any other remedy though sought other than cancellation of the 2 Month Notice.

Prior Application

The landlords and tenants attended a prior dispute resolution hearing on 12 May 2016 in respect of cross applications. The applications, in part, concerned a 2 Month Notice issued 9 April 2016 (the First 2 Month Notice). The arbitrator issued a decision in that application on 12 May 2016 (the Decision). That arbitrator made the following findings and orders:

Section 49(3) of the Act provides 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. Policy Guideline 2, Good Faith Requirement, provides that if evidence shows that, in addition to using the rental unit for the purpose shown on the notice to end tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. Given the lack of supporting evidence or other details of the foreign owner's arrival or residence in Canada and considering the 9 additional reasons for ending the tenancy for which the Landlord provided supporting materials, I find that the Landlord does not have a good faith intention to end the tenancy for the sole purpose stated in the Notice. As a result I find that the Notice is not valid and that the Tenants are entitled to its cancellation. The tenancy continues.

As the Notice has been cancelled, the Landlord is not entitled to either the order of possession or the filing fee and I dismiss both these claims.

[emphasis added]

Issue(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, 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.

This tenancy began in May 2013. Monthly rent under the tenancy agreement is \$2,500.00 and is due on the first. The landlord holds a security deposit in the amount of \$1,250.00.

On 1 June 2016 the landlords served the 2 Month Notice. The 2 Month Notice was dated 1 June 2016 and set out an effective date of 1 August 2016. The 2 Month Notice set out that it was given as the landlord or close family member of the landlord intends in good faith to occupy the rental unit.

Testimony of TB

The landlord TB testified that the registered owner of the residential property is YW. YW is a shareholder of the corporate landlord FLWC. The landlord TB is an employee of the landlord FLWC. The landlord WS is the managing partner of FLWC. The landlord SWC is a corporation that is not involved with the residential property. The landlord TB testified that all of his information about YW comes from the landlord WS.

The landlord TB testified that YW and his family intend to move to Canada and reside in the rental unit. The landlord TB testified that some minor repairs will be completed before YW begins to occupy the rental unit.

The landlord TB testified that YW will not testify because he resides in China and does not speak English. The landlord TB testified on cross examination that it has been the plan of YW to move to the rental unit for the past three years. The landlord TB admitted on cross examination that he is not sure what has changed. The landlord TB admitted that the YW's planned departure is not certain yet as they are not sure what is happening with the rental unit.

The landlord TB admitted that the relationship between the landlords and tenants is difficult right now.

Testimony of WS

The landlord WS testified that YW intends to move into the rental unit. The landlord WS admitted on cross examination that nothing has changed since the last hearing.

Testimony of DS

The tenant DS testified that he believes the 2 Month Notice was issued because WS did not get his way in regards to return of the backyard area to the tenants. The tenant DS testified that he does not believe YW is going to reside in the rental unit.

Analysis

Res judicata is the legal doctrine preventing, among others, the rehearing of an issue that has been previously settled by a judicial decision. There are three elements to this doctrine:

- an earlier binding decision has been made on the issue,
- a final judgment on the merits has been made, and
- the involvement of the same parties.

The jurisdiction of this Branch to apply the doctrine of *res judicata* was confirmed in *Khan v Shore*, 2015 BCSC 830 at para 35.

The central issue in this case is the landlord's good faith intention. In this case, there is a final and binding earlier decision between these parties on the legal issue of the landlords' good faith intention that was issued 12 May 2016. The landlord TB and the landlord WS admit that nothing has changed since the Decision. The landlords have not provided any new evidence on point to show that the issue of good faith is not substantially the same. Thus, on the issue of the landlord's good faith, I find that I am bound by the finding of the previous arbitrator in her Decision. The landlords cannot attempt to challenge that Decision through the issuance of a second 2 Month Notice as this constitutes an improper attempt to have a rehearing on a previously settled issue. Accordingly, the tenants' application to cancel the 2 Month Notice is granted. The tenancy will continue until it is ended in accordance with the Act.

As the tenants have been successful in this application, the tenants are entitled to recover the filing fee paid from the landlords.

Conclusion

The 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

I issue a monetary order in the tenants' favour in the amount of \$100.00. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: July 19, 2016

Residential Tenancy Branch