



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARTWIG INDUSTRIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on December 28, 2016.

The hearing was conducted by teleconference on February 8, 2017 at 10:30 a.m. Both parties called into the hearing.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure provides that the Landlord bears the burden of proving the Notice when a Tenant applies to dispute a notice to end tenancy.

Preliminary Matter—Previous Hearings

This tenancy has been the subject matter of two prior hearings. Copies of the previous decisions were provided in evidence by the Tenant. I have included the file numbers on the unpublished cover page of this my Decision.

August 4, 2016 hearing date

The Landlord issued a 2 Month Notice to End Tenancy on May 24, 2016 citing that he had all the necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant". The Tenant applied to dispute the Notice and a hearing occurred on August 4, 2016. The Landlord failed to attend the hearing and the Notice was cancelled.

October 20, 2016 hearing date

The Landlord issued a 2 Month Notice to End Tenancy issued August 12, 2016 citing that the Landlord has all the necessary permits and approvals required by law to demolish the rental

unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant. During the hearing the Landlord's representative, L.S., informed the Arbitrator that the "daughter of the landlord's principle will move in". The notice was cancelled as the Arbitrator found the Landlord failed to prove that vacant possession of the rental unit was required.

Issue to be Decided

1. Should the Notice be cancelled?

Background Evidence

The Landlord was represented by G.H., who testified that he holds 100% of the voting shares of the Corporation noted as the Landlord on the Notice.

G.H. stated that the tenancy began approximately a year and a half ago.

The reasons cited on the Notice are as follows:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse); and,
- The landlord has all the necessary permits and approvals required by law to convert the rental unit to a non-residential use.

G.H. testified that his step-son intends to occupy the rental unit.

Analysis

The ending of a tenancy is a significant event and can only be done in accordance with the *Residential Tenancy Act*. In the case before me, the corporate Landlord issued the Notice in accordance with section 49 of the *Act* which reads as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

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

- (a) the individual's parent, spouse or child, or
- (b) the parent 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;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(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.

(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.

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and 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.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the *Strata Property Act*;
- (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

The Notice was issued pursuant to sections 49(3) and 49(6)(f).

The Landlord has the burden of proof to establish sufficient grounds as set out in the Notice. The Notice alleges the landlord or close family member intends in good faith to occupy the rental unit. G.H. testified that the reasons for issuing the Notice are that his step son intends to reside in the rental unit. As noted during the hearing, section 49(3) applies to individuals, not corporations; the Landlord is a corporation and a corporation does not have a step son, or a close family member. Accordingly, this reason is invalid.

Further, the reasons cited are simply incompatible as the Notice indicates that the reasons for ending the tenancy are to permit the occupation of the rental unit by a family member *and* conversion of the rental unit to non-residential use.

For these reasons I find that the Notice to End Tenancy is not valid on its face. I grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

I informed G.H.'s that the Corporate Landlord was not able to issue a Notice indicating that a close family member of the Landlord would occupy the rental unit, as a corporation does not have a family. I also informed G.H. that the reasons were inconsistent, in that converting a rental unit to non-residential use *and* moving a family member into the rental unit are incompatible. At this time G.H. called his accountant, L.S., into the hearing. He stated that L.S. had completed the form for him.

I referred both G.H. and L.S. to the second page of the Notice and read the reasons which were checked off. At this time, G.H. began raising his voice and yelling into the speaker phone. He accused me of being "condescending". He also stated that he has tried to resolve this for some time and has had nothing but "problems with the Rentalsman". He then began listing off his reasons why this tenancy needed to end.

I informed the parties during the hearing that I was cancelling the Notice and that the tenancy would continue until ended in accordance with the *Act*.

Having been substantially successful, the Tenant is entitled to recovery of his filing fee. Pursuant to section 72(2)(a) I authorize the Tenant, reduce his next month's rent by \$100.00.

Conclusion

The Tenant's application to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*. The Tenant is entitled to recover the \$100.00 filing fee and may reduce his next month's rent by \$100.00.

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 08, 2017

Residential Tenancy Branch