



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Siddoo Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This is the Tenant's Application for Dispute Resolution made February 26, 2018, seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property.

Both of the parties attended and gave affirmed testimony at the Hearing which took place by teleconference. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

It was determined that the Tenant hand delivered the Notice of Hearing documents to the Landlord's property manager on February 26, 2018, at the Landlord's place of business. It was also determined that the Tenant served the Landlord with his documentary evidence, including the Tenant's last package of evidence on April 23, 2018. The Landlord provided the Tenant with its documentary evidence by registered mail, sent on April 9, 2018.

Issue(s) to be Decided

Should the Notice to End Tenancy for Landlord's Use of Property issued February 21, 2018 (the "Notice") be cancelled?

Background and Evidence

A copy of the tenancy agreement, signed February 18, 2002, was provided in evidence. This tenancy began on March 1, 2002, between the Tenant and his former landlord. The Landlord SP Ltd.'s agent RS issued the Notice on February 21, 2018, and served the Tenant by way of registered mail, sent on February 21, 2018. The Tenant testified that he received the Notice on February 22, 2018.

The Landlord's agent RS gave the following testimony:

RS testified that there are three separate, yet related, family companies which own a number of properties. He stated that a company named SKH Ltd. is at the “top” of the corporate structure, followed by the Landlord SP Ltd., which is followed by another company, LSH Ltd. He stated that SKH Ltd. is the “beneficial owner” of two other properties and that SP Ltd. is the “beneficial owner” of the rental property. RS testified that a family member, BS, wishes to move into the rental unit. He stated that BS is the sole Director of SP Ltd., and that the Directors of SKH Ltd. are BS, and three other family members.

The Landlord provided a copy of a letter from BS, which provides that she wishes to move from her son`s house into the rental unit. BS states that she was helping to take care of her son`s young children, but that she is finding it too difficult for her health to continue. In addition, BS states that her son`s house has three stories with many stairs which she cannot manage anymore and that she wants to live in a building with an elevator.

RS submitted that the Tenant and his witness gave contradictory testimony regarding their allegation with respect to who RS supposedly said would be moving into the rental unit. He repeated that BS was going to move in and denied that there were any ulterior motives for issuing the Notice.

The Tenant and his support worker gave the following testimony and submissions:

The Tenant testified that on February 22, 2018, RS told him that an adult male friend had a son who wanted to move into the rental unit because the friend`s son was going to be taking courses at a nearby university.

The Tenant`s witness stated that she was present when the Tenant spoke to RS on February 22, 2018, and that she overheard RS say that he was going to rent the Tenant`s home to à friend of his son`s who was going to university.

The Tenant stated that he believes the Landlord wants to get rid of him so it can get more rent. He stated that he pays less rent than other tenants who rent suites of the same size.

The Tenant`s support worker DD submitted that the corporate landlord is not a family corporation that possesses at least 50% of the full reversionary interest in the rental unit for at least three years, and therefore does not meet the required definition contained in

Section 49 of the Act. DD submitted that the Landlord's own documentary evidence provides that all of its shares are owned by another corporation and that the rental property is owned by yet another corporation.

DD submitted that a corporation owned by another corporation cannot fit within the definition of a "family corporation" as defined by Section 49 of the Act because a corporation cannot be an individual with siblings or close family members.

DD also submitted that the rental property is owned by a separate corporate entity from the Landlord SP Ltd. and therefore the Landlord SP Ltd. does not have a revisionary interest in the rental unit.

Analysis

The documentary evidence provides that the owner of the rental property is LSH Ltd.

The Landlord provided a letter from its lawyer which provides that the Landlord shares are all owned by SH Ltd., the shares of which are owned by BS and a number of other family members and family trusts. The lawyer also concludes that BS, as trustee, is a beneficial owner of the rental property.

When a landlord seeks to end a tenancy, the landlord must provide sufficient evidence that the tenancy should end for the reasons provided on the notice to end the tenancy.

In this case, the Notice provides the following reason for ending the tenancy:

The Landlord 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.

Section 49 of the Act makes the following definitions:

"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

(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;

I find that the Landlord has not provided sufficient evidence that the tenancy should end for the reason provided on the Notice. I accept the Tenant's submissions that the Landlord SP Ltd.'s own documentary evidence provides that all of its shares are owned by another corporation and that the rental property is owned by yet another corporation.

I hereby cancel the Notice on the grounds that the reason for ending the tenancy has not been met. The Notice is cancelled for that reason and therefore I make no finding with respect to the Landlord's good faith intent.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use of Property issued February 21, 2018, is cancelled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

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: May 15, 2018

Residential Tenancy Branch