



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B.M.G. ENTERPRISES LTD (AKA BMG ENTERPRISES)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with two joined Applications for Dispute Resolution (“applications”) under the *Residential Tenancy Act* (“Act”) by the tenants to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”) issued to both tenants.

The tenants, respondents BM and CW (“respondents”) and co-owners BM and MM (“owners”) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to the parties.

Issue to be Decided

- Should the 2 month notices be cancelled or upheld?

Background and Evidence

At the outset of the hearing co-owner BM testified that respondent BM was not an agent for the landlord and was a tenant which is supported by the tenancy agreement

submitted in evidence that indicates that respondents BM and CW are tenants of co-owners BM and MM.

There is no dispute that respondent BM and not co-owner BM served the tenant applicants both with 2 Month Notices for each of the two rental units which are Unit 1 and Unit 2. The 2 Month Notices are both dated February 22, 2018 and both tenants disputed their respective 2 Month Notice on February 26, 2018 which is within the 15 day timeline provided for under section 49 of the *Act*. The effective vacancy date listed on both 2 Month Notices is May 1, 2018. The cause listed on the 2 Month Notices is the same and states:

“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.”

[Reproduced as written]

BM and CW confirmed they are tenants renting a restaurant and two rental units above the restaurant and that both locations are part of a tenancy agreement they have with their corporate landlord which is owned by co-owners BM and MM.

The tenants do not feel that BM and CW are their landlord as they have paid rent to the co-owners BM and MM previously which the co-owners confirmed during the hearing. At one point, co-owner BM indicated that BM is free to sub-lease to whomever he wants, yet co-owner BM confirmed that respondent BM is not his agent and does not work for the landlord.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

When tenants dispute a 2 Month Notice on time which in the matter before me the tenants have done, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 4 of the *Act* defines "landlord" as follows:

"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;

[My emphasis added]

I find that respondent BM and CW do not meet the definition of landlord under the *Act* due to the testimony of co-owner BM who clearly stated on several occasions during the hearing that his tenants are not his agents or the landlord. Furthermore, I have considered that co-owner BM confirmed he has accepted rent from the tenant applicants and due to their being no written tenancy agreements between the tenant applicants and respondent BM who issued the 2 Month Notice, I find that respondent BM is actually a tenant and that there is insufficient evidence before me to support that he is a landlord.

As a result, **I cancel** both 2 Month Notices due to insufficient evidence that respondent BM is a landlord and was acting on behalf of co-owner BM to issue the 2 Month Notices.

Therefore, I find both applications of the tenants to be successful. The 2 Month Notices are of no force or effect.

I ORDER the tenancies to continue until ended in accordance with the *Act*.

The co-owner BM may not have it both ways; be a landlord and then decide he is not the landlord when it does not suit him. The fact that the co-owner BM accepted rent

from the tenants forms a landlord and tenant relationship whether or not co-owner BM agrees.

I do not consider respondents BM or CW to be landlords under the *Act* due to insufficient evidence.

Conclusion

The 2 Month Notices issued by respondent BM are cancelled and are of no force or effect.

The tenancies have been ordered to continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: May 10, 2018

Residential Tenancy Branch