



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUNTLEY INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was set to deal with Applications for Dispute Resolution filed by each tenant and joined together since the matter to resolve pertains to the same landlord, and Notices to End Tenancy issued at the same time, for the same reason, at the same residential property. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that the landlord was served with the tenants' Applications for Dispute Resolution, Application to join the application, and evidence. I also confirmed that the landlord sent its evidence to each of the tenants within the time limit for doing so. Accordingly, I admitted and have considered the written submissions and documentary evidence submitted by both parties as relevant and necessary to make this decision.

I have amended the style of cause to reflect the landlord as identified on the Notices to End Tenancy and as confirmed by the landlord's agent during the hearing.

The landlord's agent called his son to testify during the hearing. The tenants were permitted the opportunity to question the landlord's agent's son.

Issue(s) to be Decided

Should the 2 Month Notices to End Tenancy for Landlord's Use of Property dated December 5, 2018 be upheld or cancelled?

Background and Evidence

The residential property is an old house that had been divided up into multiple living accommodations in years prior. Currently the house is occupied by the two tenants appearing before me. Each of the tenants has their own separate living accommodation, identified as unit #1 and unit #3, and a separate tenancy agreement for their respective units.

The tenant referred to by initials AA occupies unit #1 and has been occupying that unit since 2003. AA is currently required to pay rent of \$550.00 on the first day of every month.

The tenant referred to by initials DB occupies unit #3 and has been occupying that unit since 2004. DB is currently required to pay rent of \$365.00 on the first day of every month.

On December 5, 2018 a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") was posted on both of the rental unit doors. The content of the 2 Month Notices are the same except for the name of the tenant and the unit numbers. Both of the 2 Month Notices indicate the same effective date of February 28, 2019 and state the same reason for ending the tenancy, which is:

- *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)*

The landlord's agent stated that he is not the registered owner of the property and the corporation named as the landlord on the subject 2 Month Notices is the registered owner of the property. The landlord's agent stated that he is a shareholder of the corporation that owns the subject property.

Both parties made considerable submissions concerning the intended use of the property, which I have only summarized below with a view to brevity.

The landlord's agent submitted that his sons, who are young adults who are going to be coming home from college, intend to occupy the residential property. The landlord explained that rent he would pay for his sons to rent an apartment close to downtown would be greater than the rental revenue he receives from the subject property so it makes economic sense for his sons to move into the residential property. The

landlord's son, referred to by initials JW, was called to testify. JW testified that he intends to move into a property close to downtown and that the subject property is close to downtown and would be not too big for him.

The tenants submitted that the landlord has attempted to evict them a number of times before and the tenants have prevailed each time. The tenants strongly doubt the landlord's son intend to occupy the residential property since the landlord owns other houses nearby that are sitting empty.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason indicated on the Notice. The stated reason for ending the tenancy on the 2 Month Notices before me is provided under section 49(3) of the Act. Section 49(3) provides that a landlord may end the tenancy where:

(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.

[Reproduced as written with my emphasis underlined]

Section 49(1) provides the definition of landlord for purposes of section 49(3). For purposes of section 49(3), landlord is defined as follows:

"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,

[Reproduced as written with my emphasis underlined]

The landlord's agent testified that the subject property is owned by a corporation. In that circumstance, I find that the tenancy cannot be ended under section 49(3) of the Act.

While the Act does contemplate the ending of a tenancy in certain circumstances where a property is owned by a “family corporation”, that is not the reason indicated on the 2 Month Notices served upon the tenants. The landlord did not seek to amend the 2 Month Notices and the landlord did not provide sufficient evidence to demonstrate it meets the definition of “family corporation” as defined under section 49(1).

In light of the above, I find the stated reason on the 2 Month Notices served upon the tenants is not valid or enforceable and I decline to amend the 2 Month Notices to reflect the landlord is a “family corporation” without evidence of such. Therefore, I grant the tenants’ requests to cancel the 2 Month Notices dated December 5, 2018 and I do not give further consideration to the submissions that the son(s) of the landlord’s agent intend to occupy the rental unit.

Since the 2 Month Notices before me were found to be invalid and unenforceable, I award the tenants’ recovery of the \$100.00 they paid for each of their applications. Each of the tenants’ are entitled to deduct \$100.00 from a subsequent month’s rent in satisfaction of this award.

Conclusion

The 2 Month Notices dated December 5, 2018 are cancelled and the tenancies continue at this time. Each of the tenants is authorized to deduct \$100.00 from a subsequent month’s rent in order to recover the filing fee paid for each of their applications.

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: January 24, 2019

Residential Tenancy Branch