



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KOREAN BAPTIST CHURCH OF
VANCOUVER and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFL

Introduction

This hearing convened as a result of a Tenants' Application Dispute Resolution, filed on December 13, 2018, wherein the Tenants sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on November 30, 2018 (the "Notice") and to recover the \$100.00 filing fee.

The hearing was scheduled for 9:30 a.m. on January 25, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

At the end of the hearing, as I was confirming that the Decision would be sent to the parties by email, the Landlord's representative, P.M., disconnected from the line. I confirm that at that point I had concluded the hearing and did not hear any further evidence or submissions from the Tenant.

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that he has been living in the rental property for almost 22 years. He does not have a written residential tenancy agreement although he confirmed that he pays rent to the Landlord named on the Application.

The Tenant stated that he does not wish to move from the rental property as he has lived there many years and has established a life and friends in the area.

The rental unit is a house which is adjacent to a church; both the house and the church are owned by the Landlord. The Tenant stated that the current Landlord took possession of the rental property in November of 2018; prior to this, the property was owned by a different church (the provincial head of that denomination) and prior to that it was owned by the local chapter of that denomination.

The Tenant stated that he is not, and has not been, been a member of the church. The Tenant stated that the local chapter of the church (which was the owner at the time) was in dire financial need and could not afford a caretaker; the Tenant agreed to maintain the property during his 22 year tenancy as well as paying \$1,600.00 in rent.

The Tenant further testified that when the church increased in size to create a kitchen, the city required that they create additional parking; the only way this could happen was if the Tenant gave up part of his back yard, which he did. The Tenant stated that he lost 15 feet of his backyard for parking and they (the previous Landlord and the Tenant) agreed that there would be no further rent increases due to the fact the Tenant had essentially lost use of the backyard.

The Tenant testified that shortly after purchasing the property, the current Landlord's pastor, P.M., told him that they needed the rental unit for office space. The Tenant

informed the Landlord that if they wished to end his tenancy and convert the rental property to non-residential use, they would need to give him proper notice under the *Residential Tenancy Act*, which he understood was four months.

The Tenant further testified that following his discussion with the Pastor about their desire to use the property for office space, the Landlord issued the Notice; the reasons indicated on the Notice are as follows:

Reason for this Two Month Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	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 Tenant stated that it was his understanding that the Landlord is a corporation such that they have checked off the wrong box, as he questioned how the church could have a “close family member”. He also stated that he does not believe that the Notice was issued in good faith based on the fact they told him shortly before issuing the Notice that they were going to use it as an office. Additionally, the Tenant stated that when he was served the Notice, the Pastor, P.M. informed him that “his family” would be moving into the rental unit and that “\$1,600.00 is not enough for this property”.

The Landlord's representative, P.M., the Pastor of the church, testified on behalf of the Landlord as follows:

He confirmed that the Landlord purchased the property on November 30, 2018. He also confirmed that the property is a single family dwelling.

P.M. stated that S.K., signed the Notice as agent of the Church.

P.M. confirmed that it is the Church's intention to use the rental unit as accommodation for their clergy, either a senior or junior Pastor of the church. He further confirmed that he is not related to other members of the clergy.

P.M. denied saying that \$1,600.00 was not enough rent for the rental unit. He further disputed the Tenants' claims with respect to his role as caretaker.

Analysis

After careful consideration of the testimony and evidence of the parties, and on a balance of probabilities I find as follows.

A residential tenancy may be ended in accordance with the *Residential Tenancy Act*. In this case, the Landlord wishes to regain possession of the rental property for their own use and seeks to end the tenancy pursuant to 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

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,

- (ii) 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

- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 4 months after the date the tenant receives the notice,

- (ii) 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

- (iii) 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*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

- (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
- (b) a notice given under subsection (6) by making an application for dispute resolution within 30 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.

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Should the landlord fail to meet this burden, the notice is cancelled and the tenancy continues until ended in accordance with the *Residential Tenancy Act*.

The reasons set out in the Notice were that 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). Such a notice is issued pursuant to section 49(3) above.

The Landlord's representative testified that the Landlord is a non-profit society. As such, the society is not an *individual*, as contemplated by section 49(3).

Further, at the hearing, the Landlord's representative confirmed that they did not know who would live in the rental unit, merely that it would probably be one of the church's senior or junior pastors. As this is inconsistent with the reasons set out in the Notice, I find the Landlord has failed to meet the burden of proving the Notice.

The Tenants' Application to cancel the Notice is therefore granted. The tenancy shall continue until ended in accordance with the *Act*.

Having been successful in their application the Tenants are also entitled to recover the \$100.00 filing fee. Pursuant to section 72(2)(a) I authorize the Tenants to reduce their next month's rent by \$100.00 as recovery of this sum.

Conclusion

The Notice is cancelled. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

The Tenants are authorized to withhold \$100.00 from their next rent payment as compensation for the filing fee for their application.

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 29, 2019

Residential Tenancy Branch