



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1224 Richardson Property Group and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord (the “Corporate Landlord”) was represented by one of the owners of the Corporate Landlord (the “Owner”). The Owner and the Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement started in 2012. Rent of \$600.00 is payable on the first day of each month. No security deposit was collected. On February 28, 2019 the Tenants were served in person with a two month notice to end tenancy for landlord’s use (the “Notice”). The stated reason for the Notice is that the landlord or a close family member of the landlord intends to occupy the unit. The Notice sets out both the Corporate Landlord’s name and the Owner’s name as the landlord.

The Owner states that rental property is owned by the Corporate Landlord that is not a family corporation. The Owner states that the rental property was purchased by the Corporate Landlord in January 2019. The Owner states that he and his partner have a family corporation that owns 36.84% of the Corporate Landlord. The Owner states that he and his partner, as individuals, intend to occupy the unit.

Analysis

Section 49(3) of the Act provides that 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. For the purposes of this section, section 49(1) of the Act defines "**landlord**" as 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.

Although the Notice sets out both the Owner and the Corporate Landlord as the landlord ending the tenancy for the reason stated on the Notice, I accept that the intention for serving the Notice to the Tenants was for the Owner, as an individual, to occupy the unit. Although the Owner's interest in the property is held by a family corporation, the Notice does not indicate that the tenancy was being ended for occupation by a family corporation and the Owner's evidence is that the rental property is not owned by a family corporation. Given the Owner's evidence of the percentage of its family corporation's ownership in the rental property and without determining whether a family corporation may be considered an individual within the meaning of the above section of the Act, I find that the Owner holds less than ½ of the full reversionary interest in the rental unit. Further based on the Owner's evidence of the date of purchase of the property I find that the Owner's reversionary interest did not exceed 3 years at the time of giving the Notice. For these reasons I find that the Notice is not valid and that the Tenants are entitled to a cancellation of the Notice. The tenancy continues.

As the Tenant has been successful with its application I find that the Tenants are entitled to recovery of the **\$100.00** filing fee. The Tenants may deduct this amount from future rent payable.

Conclusion

The Notice is cancelled and the tenancy continues.

I grant the Tenants an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 25, 2019

Residential Tenancy Branch