



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vivagrand Development (Baillie)
Corp. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

In this dispute, the tenants seek an order cancelling the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 49(8) of the *Residential Tenancy Act* ("Act") and compensation for recovery of the filing fee pursuant to section 72 of the Act.

On February 19, 2019 the tenants applied for dispute resolution and a dispute resolution hearing was held on April 26, 2019. Agents for the landlord and for the tenants attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. While the tenants' agent did not submit written proof of his authority to act, he provided oral confirmation of his familiarity with the case and the landlord's agent did not object to the agent's presence at the hearing.

The parties did not raise any issues about the service of documentary evidence.

I have reviewed evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but only evidence relevant to the issues of this application are considered in my decision. Further, I note that both parties provided written submissions regarding their respective positions and argument on the dispute, and as such I heard a minimal amount of testimony but acknowledged with the agents that I would review and consider all written submissions and documentary evidence.

Finally, I note that section 55 of the Act requires that when a tenant applies to cancel a notice to end tenancy I must consider if the landlord is entitled to an order of possession if I dismiss the tenant's application and if the notice complies with the Act.

Issues

1. Whether the tenants are entitled to an order cancelling the Notice.
2. If not, whether the landlord is entitled to an order of possession.
3. Whether the tenants are entitled to compensation for recovery of the filing fee.

Background and Evidence

This tenancy began sometime in 2011 and monthly rent is somewhere in the range of \$2,200.00 to \$2,500.00. There was no written tenancy agreement submitted into evidence and the tenants' agent could not provide specific tenancy-related information.

In early October 2018 the landlord became the new owner of the rental unit, a two-floor single family home located on a picturesque residential street. On or about February 21, 2019, the landlord issued and served the Notice on the tenants in-person. As indicated on the Notice the effective end of tenancy date would be April 30, 2019. The tenants' agent confirmed that the Notice was received on or about that date. Submitted into evidence by the tenants was a copy of the Notice.

Page 2 of the Notice indicates the following reason for the tenancy to be ended: "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 Notice was completed, signed and dated by an individual with the initials "C.T.L." (the full name of which is redacted in this Decision for personal privacy reasons). The landlord's agent testified that C.T.L. is his brother, and that he, the landlord's agent, intends to move into the rental unit. He anticipates moving into the rental unit because the house in which he currently resides is set to be demolished. The house has extensive asbestos problems and is essentially uninhabitable.

During his final submissions the landlord's agent testified that the tenants have not paid rent since receiving the Notice. That is, they have not paid rent for March or April 2019.

The landlord submitted several documents pertaining to the share ownership and corporate background information of the corporate landlord. The tenants submitted several documents pertaining to the corporate nature of the landlord and submissions as to how the Notice could not, based on that corporate structure, be validly issued. I shall address the parties' submissions in more depth within my analysis, below.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice was issued.

In this case, the Notice was issued under section 49(3) of the Act which states 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.

This is the reason indicated on the Notice. Namely, 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)." While the language is a little inconsistent between the Notice and the wording in section 49(3), it is sufficiently similar that there can be no mistake that ticking the first section in such a notice is nothing other than a ground for ending the tenancy pursuant to section 49(3) of the Act.

The reason I make this point is that the second ground (which was not a ground selected by the landlord in this case) appearing on a Two Month Notice to End Tenancy for Landlord's Use of Property form states that: "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." This reason reflects a ground for ending the tenancy under section 49(4) of the Act, which states that

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.

As the ground for which the present Notice was issued, the landlord is not an individual but is instead a corporation. Submitted into evidence by both parties was documentation establishing beyond any doubt that the landlord, which underwent a change in directors and a change in name in 2018, is a corporation. In law, a corporation may be

considered a legal person, but it cannot be considered an “individual” as intended by section 49(3) of the Act. Under the Act a landlord may exist as an individual or as a family corporation. If the landlord is an individual—a human being—then the landlord may end a tenancy for their use of property (occupancy by the landlord or a close family member) under section 49(3) of the Act. Alternatively, if the landlord is a corporation then it may end a tenancy for landlord’s use of property under section 49(4) of the Act “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.”

Here, the landlord is not an individual and thus cannot end the tenancy under section 49(3) as indicated on the Notice. Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the Notice was issued.

Given the above, I cancel the Notice dated February 21, 2019; the Notice is of no force or effect and the tenancy will continue until it is ended in accordance with the Act.

I award the tenants \$100.00 for the filing fee pursuant to section 72(1) of the Act. They may deduct \$100.00 from rent for May 2019 in full satisfaction of this award.

Conclusion

I order that the Notice dated February 21, 2019 is hereby cancelled and is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

This decision is final, binding, and made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 26, 2019

Residential Tenancy Branch