



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1074582 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** CNL and CNL, FTT

### **Introduction**

This hearing dealt with two applications, one from each tenant, pursuant to the *Residential Tenancy Act* (the “**Act**”). Tenant MK’s for:

- cancellation of the landlord’s Two Month Notice to End Tenancy for Landlord’s Use of Property (the “**MK Notice**”) pursuant to section 49;

And tenant DK’s for:

- cancellation of the landlord’s Two Month Notice to End Tenancy for Landlord’s Use of Property (the “**DK Notice**”) pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This hearing took place over two days. An interim decision, which dealt with issues of service of documents by the tenants, was issued following the adjournment of the first hearing. The landlord was represented by counsel at the hearings. Both tenants attended the hearings, and tenant MK made submissions on both their behalves. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

In the interim decision, I ordered that the landlord serve the tenants with its evidence by May 3, 2019. The tenants confirmed that the landlord did this. As such, I find that the landlord has served the tenants with its evidence, in accordance with the Act.

### **Issue(s) to be Decided**

Are the tenants entitled to have the DK Notice and MK Notice (collectively, the “**Notices**”) cancelled?

Is tenant DK entitled to reimbursement of the filing fee for this application?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The landlord and tenant MK entered into a tenancy agreement starting March 1, 2017 to rent a mobile home located on pad 10 of the mobile home park. The current monthly rent is \$400.00. Tenant MK did not pay a security deposit to the landlord.

The landlord and tenant DK entered into a tenancy agreement starting November 1, 2001 to rent a mobile home located on pad 9 of the mobile home park. The current monthly rent is \$385.00. Tenant DK did not pay a security deposit to the landlord.

The landlord has previously attempted to end these tenancies by issuing a Four Month Notice to End Tenancy to convert the rental unit into a non-residential use. The tenants successfully applied to the Residential Tenancy Branch to have these Notices cancelled in July 2018. Copies of these decisions were entered into evidence. In the decision relating to tenant MK's rental unit, the arbitrator found:

The landlord has demonstrated that they may have an ulterior motive in issuing the Four Month Notice as they are in the process of re-developing the land it is on and the Agent has made it clear in their testimony that the re-development of the trailer court, which requires the manufactured home to be moved, is closely tied to the landlord's issuance of the Four Month Notice

Even if the landlord intends on converting the rental unit, I accept the tenant's submissions that the landlord only decided to issue the Four Month Notice upon the tenant not agreeing to sign a mutual agreement to end the tenancy, which negates the honesty of the landlord's intent.

On February 21, 2019, the landlord issued the Notices to the tenants. The effective dates of the Notices were April 30, 2019. The Notices set out the reason for ending the tenancies as:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or close family member intends, in good faith, to occupy the rental unit.

The landlord entered contracts of purchase and sale for each rental unit. DK's rental unit was to be sold to a buyer "SS Ltd.", and MK's rental unit was to be sold to buyer "GH Ltd.". Counsel for the landlord stated that the reason for the sale of the rental units was purely an economic one.

The landlord entered into evidence copies of two letters (one from each buyer), dated February 20, 2019, wherein each buyer advises the landlord that:

- 1) all conditions on the respective contracts of purchase and sale have been satisfied or waived;
- 2) each rental unit is currently rented to one of the tenants; and
- 3) each buyer (or one or more of the spouse, children, and parents of each buyer or, in the case of a family corporation, voting shareholders of each buyer) intends in good faith to occupy the respective rental unit.

These letters did not identify who was to occupy each rental unit. Counsel for the landlord advised me that the owner of SS Ltd. ("JS") was going to occupy DK's rental unit, and that the son of the owner of GH Ltd. ("MS") was going to occupy MK's rental unit.

The landlord entered copies of company searches for the two buyers, which show the directors and officers of the each buyer. These documents do not show the shareholders. The landlord provided no documentary evidence showing the shareholders of each buyer, nor did a representative of either buyer attend or make an affidavit to provide such information.

Counsel for the landlord advised me that the buyers were arm's length from the landlord. He also advised me that each buyer intended on moving their rental unit to another location within the same municipality.

The tenants argue that the Notices were not issued in good faith by the landlord. Tenant MK testified that the landlord owns four other mobile homes, all of which are newer than her and DK's rental units, and are vacant. She argues that the landlord's choice to sell the only two that are occupied suggests an ulterior motive on the part of the landlord.

She argues that the landlord wants her and DK out of the rental units so as to allow for a more convenient redevelopment of the mobile home park.

Tenant MK argued that the fact the landlord unsuccessfully attempted to evict the tenants on other grounds in 2018 is further evidence of their lack of good faith in issuing the Notices.

Tenant MK also argued that the contracts of purchase and sale are not valid because they are not witnessed, and do not clearly identify the names of the signatories signing on behalf of the buyers and landlord. Tenant MK argued that this would cause the Notices to not be valid.

### **Analysis**

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, I find that the landlord has the onus to prove that the Notices were validly issued.

### **Validity of Contracts of Purchase and Sale**

I accept that the contracts of purchase and sale are not witnessed, and the signatories for the buyers and landlord are not named. However, the tenants have not cited any authority which supports their position that these omissions would cause either contract to be invalid. The well-established requirements for a contract, at common law, are “offer”, “acceptance” and “consideration”. I find that, for each of the contracts, these elements are met, and the contracts are therefore valid.

## Governing Law

The Notices were issued pursuant to section 49(5) of the Act. It states:

### **Landlord's notice: landlord's use of property**

- (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:
    - [...]
    - (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.

As such, the landlord must prove that:

- 1) it acted in good faith to sell the rental units;
- 2) all conditions of the sale have been met;
- 3) the buyers requested, in writing, for the tenancy to be ended; and
- 4) a person owning voting shares in the buyer, or a close family member of such a person, intends in good faith to occupy the rental unit.

## Good Faith of the Landlord

The principle of good faith is considered in Policy Guideline 2. It states:

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v Aarti Investments Ltd.*, 2018 BCSC 636.

[emphasis added]

The tenants argued that the landlord did not have the required good faith as they had an ulterior motive for issuing the Notices, namely, to facilitate the redevelopment of the mobile home park. The arbitrator presiding over one of the July hearings found that:

[The landlord has] an ulterior motive in issuing the Four Month Notice as they are in the process of re-developing the land it is on.[...] The re-development of the [mobile home park], which requires the [rental unit] to be moved, is closely tied to the landlord's issuance of the Four Month Notice.

Nothing in the submissions made by the landlord's counsel leads me to understand that the landlord is not continuing in its efforts to redevelop the mobile home park. I find that, on a balance of probabilities, the ulterior motive the prior arbitrator has found to exist remains with the landlord. I find that it is more likely than not that one factor in the landlord's decision to sell the rental units to the buyers was that it knew the buyers intended to remove the rental unit from the mobile home park.

I accept that one of the landlord's motives for selling the rental units may have been a legitimate economic one. However, I do not accept that this was the only motive driving the landlord's decision. As stated in Policy Guideline 2, the landlord has the onus of showing that it acted in good faith, which means it must demonstrate that the *only* motives it had for selling the rental unit were legitimate. I find that it has failed to meet this onus.

As such, I find that the landlord had an ulterior motive in selling the rental units, and therefore does not possess the requisite good faith to meet the test as set out in section 49(5)(a) of the Act.

In the event that I am incorrect in my determination that the landlord does not have the necessary good faith, I find that the landlord has failed to discharge its evidentiary burden to demonstrate that the buyers are "family corporations" as defined by the Act, or that buyer's proposed occupants of the rental unit are voting shareholders, or close family members of voting shareholders, of the family corporation.

Section 49(1) states:

**"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;

I have no evidence (either primary documents or affirmed testimony) before me to be able to determine if SS Ltd. or GH Ltd. are family corporations. I do not know who owns the voting shares of either company.

I have no evidence before me as to the identities of the shareholders of SS Ltd. or GH Ltd. The company searches entered into evidence do not contain this information. As such, I cannot determine if JS is a voting shareholder of SS Ltd. or if the parent of MS is a voting shareholder of GH Ltd.

This information is necessary in order for me to determine if the if the requirements of 49(5)(c) are met. As such, I find that the landlord has failed to discharge its evidentiary burden to show that the landlord complied with section 49(5) of the Act.

Accordingly, I order that the Notices are cancelled and of no force and effect.

As tenant DK has been successful in his application, I order that the landlord reimburse him his filing fee (\$100.00).

### **Conclusion**

Pursuant to section 49, I order that the Notices are cancelled and of no force and effect.

I order that both tenancies continue until they are ended in accordance with the Act.

Pursuant to section 72, I order that the landlord pay tenant DK \$100.00, representing the reimbursement of his filing fee.

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: May 24, 2019

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Residential Tenancy Branch