



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BLACK DOOR HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to section 49; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The tenant and the landlord's representatives/shareholders attended the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call and cross-examine witnesses.

The tenant testified that she served the landlord with the Notice of Hearing and Application for Dispute Resolution and her evidence by registered mail sent on May 27, 2019. The tenant testified that she provided additional evidence by registered mail on June 5, 2019. The tenant provided the Canada Post tracking numbers in support of service referenced on the first page of the decision. Based on the undisputed testimony of the tenants, I find the tenant served the landlord with the documents pursuant to section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order for the cancellation of the landlord's Two Month Notice pursuant to section 49?

Is the tenant entitled to reimbursement of the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started on August 15, 2017. The monthly rent was \$950.00 with a \$450.00 security deposit.

The parties agreed that the Two Month Notice was served on May 21, 2019. The notice had a stated move out date of August 1, 2019. The Two Month Notice stated that the tenancy was being ended so that the landlord could occupy the unit. The tenant claims that the Two Month Notice was not issued in good faith and she seeks an order cancelling the notice.

The tenant testified that the landlord recently purchased the building in April 2019 and the landlord is attempting to remove all the tenants from the building. The tenant testified that there are six rental units in the building and the landlord has sent notices to end tenancy to all of the tenants in the building. The tenant testified that the other tenants in the building received notices to end tenancy for renovations related to electrical repairs.

The tenant also testified that the rental unit was very small and unsuitable for the occupancy of more than one person. In addition, the tenant argued that the landlord only intended to occupy the rental unit at most for a few months until the landlord's home construction was completed in November 2019. The tenant argued that the Act does not require her to vacate the rental unit for such a short occupancy by the landlord.

The landlord's representatives testified that R.C. and L.W. own 100% of the voting shares of the landlord corporation and R.C. and L.W. will reside in the rental unit after the tenant vacates the rental unit.

The landlord's representatives testified that the other units in the building do require electrical repairs but this rental unit does not. The landlord's representative testified that they chose this rental unit to move into specifically because it does not require electrical repairs and it is the largest unit in the building. The landlord's representatives testified that the rental unit is approximately 400 square feet.

The landlord's shareholders also testified that they intend to use the rental unit as an office for their business in addition to residing there. The landlord's shareholders were not sure what use they would make of the rental unit after their house construction was complete. They testified that the rental unit might be solely used as an office after that time.

Analysis

Section 49(3) of the *Act* permits a landlord to end a tenancy "...if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

Furthermore, section 49(4) of the *Act* 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. Since R.C. and L.W. own 100% of the voting shares of the landlord corporation, I find that the landlord qualifies as a family corporation pursuant to section 49 of the *Act*.

The tenant argued that the Two Month Notice was not issued in good faith. *Residential Tenancy Policy Guideline* No. 2 explains the good faith requirement in Section 49(3) of the *Act* as follows:

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.

Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:

- a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));
- a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental

unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also that they do not have another purpose or an ulterior establish motive for ending the tenancy.

In this matter the tenant has called the good faith intent of the landlord into question by testifying that the landlord has also issued notices to end tenancy to all of the other tenants in the building at the same time shortly after the landlord purchased the building. If find that the simultaneous timing of these notices does call into question the landlord's good faith.

By calling the good faith intent of the landlord into question, the landlord has the onus of proof to establish that they truly intended to do as they said they would and that they do not have another purpose of ulterior motive for ending the tenancy.

The landlord's shareholders testified that they would reside in the rental unit until their home construction was completed. After that, the landlord's shareholders testified that they did not know what they would use the rental unit for. They testified they may use the rental unit as an office. As such, the landlord's shareholders were only planning to temporarily occupy the rental unit.

The stated move out date on the Two Month Notice was August 1, 2019. If the landlord's shareholders moved into the rental unit in August 2019, they would only reside in the rental unit for three months before they would move into their newly constructed house in November 2019 as the landlord's shareholder planned. I find that a temporary stay of approximately three months does not satisfy the requirement of section 49(4) of intending "...in good faith to occupy the rental unit."

Section 51(2)(b) provides compensation for the tenant if "...the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice." As such, I find that section 51(2)(b) makes an implied requirement that a notice to end tenancy pursuant to section 49 must be for a landlord's occupancy of at least six months of duration. In this matter, I find that the landlord has not provided sufficient evidence to establish that the corporation's shareholders intend to reside in the rental unit for at least six months.

For the forging reasons, I grant the tenant's application to cancel the Two Month Notice. The Two Month Notice is hereby cancelled and it is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

Since the tenant has prevailed in this matter, the tenant is granted reimbursement of the filing fee pursuant to section 72 of the *Act*. To satisfy this order, the tenant may deduct the sum of \$100.00 from ONE future rent payment.

Conclusion

The tenant's application to cancel the Two Month Notice is granted. The Two Month Notice is hereby cancelled and it is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

The application for reimbursement of the filing fee is granted. To satisfy this order, the tenant may deduct the sum of \$100.00 from ONE future rent payment.

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: June 30, 2019

Residential Tenancy Branch