Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1222356 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL-4M, 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;
- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit (the "**Four-Month Notice**") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by two of its employees acting as agents ("**MX**" and "**NG**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of Evidence and Amendment

The tenant amended her claim on January 30, 2020 to dispute the Two-Month Notice. In the application to amend she wrote that she was in another city since December 17, 2019 attending to a family member's medical emergency and that she had not received the Two-Month Notice. She wrote that she was informed by her neighbour that the neighbour had received a Two-Month Notice. The tenant assumed (correctly) that the landlord had issued a Two-Month Notice against her as well.

Rule of Procedure 4.6 requires that any amendment to an application be served on the opposing party no later than 14 days before the hearing. MX testified that the landlord did not receive the amendment, or any of the tenant's evidence, until February 4, 2020.

I asked the parties how they wanted to proceed, and MX stated that the landlord was prepared to proceed to argue the tenant's application to dispute the Two Month Notice. MX also testified that the landlord did not have any evidence they would like to submit in response to the tenant's amended application that they had not already submitted, other than a copy of the Two-Month Notice.

I permitted the landlord to upload a copy of the Two Month Notice to the Residential Tenancy Branch (the "**RTB**") website and email a copy of it to the tenant during the hearing and admitted the Two-Month Notice into evidence.

MX also stated that the landlord consented all of the tenant's evidence being admitted into evidence, not withstanding that they had received it on February 4, 2020.

The tenant testified that, as she was in another city since December 17, 2019, she had not received the landlord's documentary evidence. However, she testified that she was prepared to proceed with her application.

So, by consent of the parties, I will deem that each has been served with the other's required documents in accordance with the Act.

Preliminary Issue – Four-Month Notice

AT the outset of the hearing the MX testified that the landlord would like to withdraw the Four-Month Notice. She testified that it was sent in error, and that the reason the landlord was ending the tenancy was for reason listed on the Two-Month Notice.

Accordingly, by consent of the landlord, I order that the Four-Month Notice is cancelled and of no force or effect.

Issues to be Decided

Is the tenant entitled to:

1) an order cancelling the Two-Month Notice; and
2) recover her filing fee from the landlord?

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 tenant and the prior owner of the residential property entered into a tenancy agreement starting June 1, 2014. Monthly rent is currently $937. The tenant paid the landlord a security deposit of $425. The landlord still retains this deposit.

The residential property is a two-story apartment building which contains 10 rental units. The tenant occupies a rental unit on the second floor.

The landlord is a numbered BC company.

MX testified that the landlord recently purchased the residential property. She testified that the landlord is owned by two individuals, each of whom wants to move into one floor of the residential property along with their respective spouses, parents, and children. MX testified that one of the owners of the landlord would be moving into the tenant's rental unit. MX testified that the landlord did not intend to make any renovations to the residential property.

The landlord submitted no documentary evidence regarding its corporate ownership structure. It did not submit any written statement from either of its owners or the owners' family members regarding the owners' intentions.

On December 18, 2019, the landlord served a copy of the Two-Month Notice on the tenant via registered mail (Canada Post tracking number recorded on the front page of this decision). It listed the effective date as March 31, 2020. It set out the basis for ending the tenancy as:

> The rental unit will be occupied by the landlord o the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

As stated above, the tenant testified that she did not receive the Two-Month Notice in December 2019, or indeed until this hearing (when I permitted the landlord to email a copy of it to her). She testified that she did not file an application to dispute the Two-Month Notice until January 30, 2020, as she was in another city with her sister, who was undergoing a critical, unexpected illness.

The tenant testified that she visited her sister on December 17, 2019 and intended to spend Christmas holidays with her. She testified that both she and her sister became very ill, and that she remained in the other city through the Christmas break. She testified that she recovered from the illness, but that her sister had to be admitted to a hospital where she was put into a medically induced coma for nine or ten days. The tenant provided a copy of a letter from the hospital's Intensive Care Unit social worker who confirmed that the tenant's "immediate family member" was admitted to the hospital on January 8, 2020 and was "critically ill". He wrote that the tenant was at the hospital daily, and that she was an "Temporary Substitute Decision Maker" for her sister.

The tenant testified that during this time her priority was to her sister. She testified that this was the reason she was not at home to receive the Two-Month Notice or able to dispute in a timely fashion. I note that the tenant testified that her sister's medical condition has improved, and that she is no longer in a coma.

After reviewing the Two-Month Notice, the tenant argued that the landlord did not fill it out correctly. She argued that, as the landlord is not an individual, it should have listed as the reason for ending the tenancy as:

> The landlord that 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.

MX disagreed that this was the option the landlord should have selected. She testified that the landlord was not a "family corporation" and testified that it was a "regular corporation".

The parties made other submissions regarding the intentions of the landlord for issuing the Two-Month Notice (that is, whether the landlord is acting in good faith), but for the reasons set out below, it is not necessary for me to recount them here.

Analysis

1. Tenant's Lateness in Disputing the Notice

Section 90 of the Act states that a document served by registered mail is deemed served five days after being sent. As such, I find deem that the Two-Month Notice was served on the tenant on December 22, 2019. Per sections 49(8) and (9) of the Act, the tenant must dispute the Two-Month Notice within 15 days of being served (that is,

January 6, 2020) or else she is conclusively presumed to have accepted that the tenancy ends on the effective date.

However, section 66 of the Act states:

> **Director's orders: changing time limits**
>
> 66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.
>
> […]
>
> (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Policy Guideline 36 considers this section. It states:

> **Exceptional Circumstances**
>
> The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.
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> Some examples of what might not be considered "exceptional" circumstances include:
>
> - the party who applied late for arbitration was not feeling well
> - the party did not know the applicable law or procedure
> - the party was not paying attention to the correct procedure
> - the party changed his or her mind about filing an application for arbitration
> - the party relied on incorrect information from a friend or relative
>
> Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:
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> - the party was in the hospital at all material times
>
> The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

I accept the tenant's testimony that she was in another city when the Two-Month Notice was served, and that she was unable to return to the rental unit prior to the 15-day period in which to dispute the Two-Month Notice expired due to the medical emergency involving her sister. I accept the contents of the letter of the ICU's social worker as true and find that the tenant's continued presence at the hospital was required throughout her sister's illness.

I find that such circumstances are "exceptional" within the meaning of the Act. The tenant has a strong, compelling, and persuasive reason for not applying to dispute the Two-Month Notice before January 6, 2020. As such, I find it appropriate, pursuant to section 66 of the Act, to extend the time limit for the tenant to dispute the Two-Month Notice until February 1, 2020.

Accordingly, I find that the tenant disputed the Two-Month Notice within the required time limit. Accordingly, I will determine if the Two-Month Notice is valid.

2. Validity of the Two-Month Notice

I find that the landlord is a corporation. I accept the MX's submissions that it is not a "family corporation" as defined at section 49(1) of the Act. I note that the Act defines a "family corporation":

> **"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 am unaware of the share structure of the landlord, but based on MX's testimony, I understand that the two owners of the landlord are not related.

As such, I must determine if rental unit is to be occupied for the purpose indicated on the Two-Month Notice. I find that the landlord issued the Two-Month Notice pursuant to section 49(3) of the Act which states:

> **Landlord's notice: landlord's use of property**
>
> (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.

I find that the landlord is not an individual. It is a corporation. As such, it cannot satisfy the requirements of section 49(3).

I have already found, based on the submissions of MX, that the landlord is not a “family corporation”, so the landlord is not permitted to end the tenancy pursuant to section 49(4).

Accordingly, I find that the Two-Month Notice is invalid, and I order that it be cancelled. The tenancy shall continue.

As the tenant has been successful in her application, pursuant to section 72(1), I order that the landlord reimburse her the filing fee. Pursuant to section 72(2), I order that she may withhold $100 from a subsequent month’s rent in satisfaction of this monetary award.

Conclusion

The tenant’s application is successful. The Two-Month Notice is cancelled and of no force and effect.

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: February 07, 2020

Residential Tenancy Branch