



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1170885 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

On August 10, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing with M.G. attending as his advocate. N.L. attended the hearing as an agent for the Landlord. She acknowledged that the name of the Landlord on the Application and the Notice was wrong. The style of cause on the first page of this Decision was amended to correct the proper name of the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by registered mail on or around August 14, 2020. N.L. confirmed that this package was received by the Landlord. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was served the Tenant's Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

N.L. advised that the Landlord's evidence was placed in the Tenant's mailbox on September 14, 2020 and submitted to the Residential Tenancy Branch on September 18, 2020. The Tenant confirmed that he received this evidence "about 10 days ago". She stated that she submitted this evidence to the Residential Tenancy Branch late because of personal circumstances and she forgot. Despite the Landlord's evidence not being served to the Residential Tenancy Branch in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, as it was served to the Tenant on time, I have accepted this evidence and will consider it when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the Landlord purchased the rental unit on or around July 2018 and inherited this month to month tenancy. Rent was currently established at \$1,350.00 per month and was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

N.L. advised that the Tenant was served the Notice by posting it to his door on July 31, 2020. The reason the Landlord served the Notice is because "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." The Tenant confirmed that he received the Notice on July 31, 2020 and subsequently made his Application to cancel the Notice. The effective end date of the tenancy was noted as September 30, 2020.

Many submissions were made by both parties regarding details and incidents that have transpired during this tenancy. This rental unit is part of a four-plex and it is the Tenant's belief that the Landlord is attempting to evict all the residents of this complex in bad faith based on questionable comments and actions made by representatives of the Landlord. The Tenant referenced a previous Decision made on a similar matter of another residence of this four-plex (while the details of this Decision were not considered, for reference, the relevant file number is noted on the first page of this Decision).

However, with respect to the reason the Notice was served, N.L. advised that the Landlord is a numbered company that is owned by two separate companies. Her and her husband own one of these companies, and their friend owns the other company. She confirmed that according to the definition of "family corporation" under the *Act*, the Landlord would not be considered a family corporation.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord is a family corporation and wants to end a tenancy 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.

This Section also defines a family corporation as "in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's brother, sister or close family members."

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. As N.L. acknowledged that the Landlord is not a family corporation.

Furthermore, as there has been insufficient evidence provided to demonstrate that the Landlord meets the definition of a family corporation under the *Act*, I am not satisfied that the Landlord has established persuasive grounds to justify service of the Notice. Therefore, I find that the Notice of July 31, 2020 is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of July 31, 2020 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: September 25, 2020

Residential Tenancy Branch