



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Quay Pacific Property Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for compensation payable where a landlord does not use the property for the purpose stated on a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), as provided under section 51(2) of the Act.

One of the named tenants appeared and three agents for the named respondent, a property management company, appeared.

At the outset of the hearing, I confirmed the tenants had sent their proceeding package to the named landlord via registered mail; however, the named landlord testified that the tenant's evidence was not provided. The tenant was uncertain as to whether their evidence was provided to the named landlord.

I confirmed the evidence of the named landlord was sent to the tenant via registered mail and the tenant confirmed receipt of the landlord's evidence.

Aside from the service issue concerning the tenant's evidence, the landlord made submissions pointing to the issue of proper naming of the landlord and I proceed to consider that issue, as set out below.

Preliminary Issue – naming of landlord

When the tenants initially filed their Application for Dispute Resolution the tenants named two landlords: the property management company and an individual whom the tenant described as being the owner of the property. The tenants had provided a service address for both the property management company and the owner of the property as being the same – which is that of the property management company office.

The tenants then amended the Application for Dispute Resolution to remove the owner as a named party, indicating that the named individual lives in another country.

At the hearing, the tenant stated he removed the owner upon the instruction of the Residential Tenancy Branch. I turned to the Residential Tenancy Branch records and noted that an Information Officer made a record of speaking with the tenant. The record does not reflect that an instruction to remove the owner was given to the tenant. Rather, the Information Officer's record indicates the tenant was informed that each respondent had to be served with the proceeding package by the service deadline and the tenant responded that one of the respondents was in another country. The Information Officer informed the tenant it is upon the applicant to name the parties and information was provided with respect to how to remove a party.

In speaking with the tenant, the tenant appeared to take the position that he is unable to serve the owner because the owner is in another country; however, I reject that position as being accurate.

In any event, the owner was removed as a named party by the tenants and the tenants did not serve the owners with the proceeding documents. As such, I proceed to determine whether it is appropriate to name the property management company for this proceeding.

The agents for the property management company submitted that the tenancy ended on February 28, 2020 and their agency contract with the owner ended on February 29, 2020. The property management company provided several email exchanges to show that the owner had represented to the property manager that the owner would be moving into the rental unit after the tenancy ended and to terminate the tenancy for the owner's use by March 2020. The owner subsequently instructed the property management company to make some painting repairs to the rental unit and then to give the keys for the rental unit to another person authorized by the owner to retrieve the keys. The painting was completed in March 2020 and the property management company gave the keys to the owner's representative on April 5, 2020.

The property management company submitted that it issued the 2 Month Notice upon the owner's representation that the owner or owner's close family member would be occupying the rental unit starting in March 2020. Further, the property management company had no knowledge or control over what happened with the rental unit after the tenancy ended with the exception of the painting and turning the keys over to the owner's representative on April 5, 2020.

The property management company provided an excerpt from its internal ledger in an effort to support its position that the agency relationship with the owner ended on February 29, 2020. The property management provided copies of several emails exchanged with the owner and the owner's representative between the months of October 2019 through April 2020 in support of its position that it was acting as the owner's agent until the tenancy ended and or until the keys were given to the owner's representative at the latest.

The tenant responded that he did not refute that the agency relationship between the owner and the property management company ended upon the end of his tenancy, or shortly thereafter. The tenant also acknowledged that the rental advertisement he found for the subject property that was posted online in June 2020 appears to be posted by the owner, not the named property management company.

Issue(s) to be Decided

Is the property management company the appropriate party to name as landlord in this case?

Analysis

Section 1 of the Act provides for the definition of "landlord" as follows (with my emphasis in bold):

"landlord", in relation to a rental unit, includes any of the following:

- (a) **the owner of the rental unit, the owner's agent** or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement,
 - or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and

- (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) **a former landlord, when the context requires this;**

I accept the unopposed evidence before me that the property management company was acting as an agent for the owner throughout the subject tenancy and would meet the definition of landlord under paragraph (a) of the definition.

I accept from the unopposed evidence before me that the property management company, acting as agent for the owner, served the tenants with a 2 Month Notice based on representations and authorization of the owner under section 49(3) of the Act, which provides that a tenancy may be ended where:

(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.

Section 49 of the Act provides a definition of “landlord” for purposes of issuing a 2 Month Notice under section 49(3) as being an individual who holds at least a one-half interest in the property.

The subject tenancy has ended pursuant to the 2 Month Notice served upon the tenants so that the owner, or owner’s close family member may occupy the rental unit, and I was provided undisputed evidence that the property management company ceased acting as the owner’s agent shortly after the tenancy ended. I further accept the unopposed evidence before me that the property management company has no knowledge or control over the property after the keys to the property were given to the owner’s representative on April 5, 2020.

The compensation sought by the tenants in this case is provided under section 51(2) of the Act, as reproduced below:

Section 51(2) of the Act which provides:

(2) **Subject to subsection (3), the landlord** or, if applicable, the purchaser who asked the landlord to give the notice **must pay the tenant**, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) 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.

(3) **The director may excuse the landlord** or, if applicable, the purchaser who asked the landlord to give the notice **from paying the tenant the amount required under subsection (2)** if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

- (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
- (b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[My emphasis in bold]

In keeping with the 2 Month Notice served upon the tenants, I find the owner or owner's close family member was required to occupy the rental unit within a reasonable amount of time after the tenancy ended and for at least six months to avoid the compensation provision of section 51(2) of the Act; or, the owner must prove an exceptional circumstance prevented that from happening.

In naming the property management company, whose agency relationship with the owner ended no later than April 5, 2020, I accept the property management company has no knowledge or control over the property after that date. As such, I find the property management company is not in a position to provide evidence as to what the rental unit was used for after the agency relationship ended or whether an "exceptional circumstance" prevented the owner from using the rental unit for the stated purpose, if

that occurred. Therefore, I find to proceed against the property management company is prejudicial to the property management company and unfair in the circumstances.

Also of consideration in making my decision is that section 49 also permits a landlord to end a tenancy where the purchaser of the property requests the landlord do so because the purchaser intends to occupy the property and section 51(2) provides that the tenant may pursue the purchaser for compensation if the purchaser fails to fulfill that purpose. In this scenario, the former owner is not held responsible for the actions, or lack thereof, of the purchaser and the Act gives the tenant a remedy to pursue the purchaser. In the case before me, I find the situation is not dissimilar in that the tenancy was ended so that the owner may occupy the rental unit and it is the owner that had an obligation to fulfill the stated purpose on the 2 Month Notice. Therefore, I find it appropriate that the tenant's remedy is against the owner of the property and not the property management company which had no control or knowledge as to what happened with the property after the tenancy ended, or shortly thereafter.

In light of the above, I dismiss the tenant's application against the property management company but I grant the tenants leave to reapply against the appropriate party.

It is important to note that in dismissing the tenant's application against the property management company the tenants are not deprived of remedy. The tenants remain at liberty to pursue the owner of the property.

Conclusion

The tenant's application is dismissed with leave to reapply against the appropriate party.

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: January 13, 2021

Residential Tenancy Branch