



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1078263 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

On December 10, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) issued on November 26, 2020. The matter was set for a conference call.

The Landlord’s Agent (the “Landlord”), the Tenant and their Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice issued November 26, 2020, be cancelled?
- If not, are the Landlords entitled to an order of possession?

Background and Evidence

The parties agreed that the Notice was served on the Tenant by registered mail, sent on November 26, 2020. The Notice indicated that the Tenant was required to vacate the rental unit as of January 31, 2021. The reason checked off by the Landlord within the Notice was as follows:

- A 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 parties also agreed that there were two previous Two-Month Notice to End tenancy issued by this Landlord to this Tenant that were both cancelled in previous hearings before the Residential Tenancy Branch. The Tenant submitted the file numbers for both hearings into documentary evidence, and they have been recorded in the style of cause page for this decision.

The Landlord's Agent testified that they received a letter from the owner of the property asking them to end the Tenancy as they would be occupying the rental unit themselves. The Landlord's agent confirmed when asked by this Arbitrator that they had not submitted a copy of this email into documentary evidence.

The Tenant stated in their written submission to these proceedings that they believe the Landlord's has not issued the Notice in good faith and that the repeated Notices are frivolous litigations. Specifically, the Tenant is claiming that the corporation that owns this rental property does not meet the definition of "Family Corporation" as set out in the Act and that this "business" can not end the tenancy with a "Two-Month Notice for Landlord's Use of the Property."

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the documentary evidence provided by the Tenant that the Landlord served the Notice by registered mail sent on November 26, 2020. Pursuant to section 90 of the Act, I find that the Tenant was deemed to have received the Landlord Notice to end the tenancy five days later, on December 1, 2020.

Section 49 of the Act states that upon receipt of a notice to end a tenancy for Landlord use of the property, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until December 16, 2020, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on December 10, 2020, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith, as they do not meet the definition of a Family Corporation. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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 the Tenancy.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

Section 49(4) provides the following definition of a family corporation:

Landlord's notice: landlord's use of property

49 (1) In this section:

"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 reviewed the totality of the documentary evidence submitted by these parties to this proceedings, and I note that the Landlord has failed to submit any evidence that would support their claim that the corporation listed as the Landlord for this rental property meets the definition of a family corporation, as defined by the *Act*.

As stated above, it is the Landlord who holds the burden of providing sufficient evidence to prove that their Notice was issued in good faith and in accordance with the *Act*.

As the Landlord has failed to submit any documentary evidence in support of their Notice, or their claim that they are in fact a “family corporation” as defined above, I must find that the Landlord had not proven sufficient cause, to satisfy me, to terminate the tenancy for the reason indicated on the Notice they issued.

Consequently, I grant the Tenant’s application to cancel the Notice dated November 26, 2020, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Conclusion

The Tenant’s application to cancel the Notice issued November 26, 2020, is granted. This tenancy will continue until legally 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: March 5, 2021

Residential Tenancy Branch