



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0811078 B.C. LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL OLC FFT

Introduction

This hearing dealt with the applications made by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for:

- Cancellation of a 2 Month Notice to End Tenancy for Landlord’s Use (the “2 Month Notice”) pursuant to section 49;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fees from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate respondent was represented by their agent (the “Landlord”) and counsel. The agent of the corporate purchaser of the subject property (the “Purchaser”) also attended. The applicants each attended and gave testimony with the assistance of an advocate.

A typographic error in the spelling of the name of one of the applicants was noted and corrected. The correct name is used in the style of cause for this decision.

As the parties were present service of the applications for dispute resolution and respective evidence was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Were each of the applicants served with a 2 Month Notice?

Should the 2 Month Notices be cancelled? If not is the landlord entitled to an Order of Possession?

Should the Landlord be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The parties agree that there is a valid and enforceable tenancy agreement between the landlord and each of the applicants as defined in the *Act*. The rental property includes a marina and rental pads for manufactured homes as well as several fixed-foundations homes. The dispute addresses are the detached fixed-foundation homes found on the property. The parties agree that the nature of their relationship and the rental addresses fall under the jurisdiction of the *Act*.

The tenants residing in Unit #3 act as caretakers and managers for the rental property. On or about November 23, 2020 the landlord issued 2 Month Notices for each of the occupants of the rental property. The landlord served the 2 Month Notices by having a process server leave them at Unit #3. The tenants of Unit #3 confirmed that they were served with the 2 Month Notices, including one directed at their rental unit, on or about November 23, 2020.

The tenants submit that the bundle of 2 Month Notices were served on Unit #3 with no additional instructions, cover letter or information on what should be done. The tenants of Unit #3 testified that they met with their Advocate who recommended that they distribute the 2 Month Notices to the other tenants. The tenants of Unit #2 and the Big House testified that they have not been served with the 2 Month Notice and as of the date of the hearing have not seen a copy of the notice.

Despite their claim that they have not been served with nor seen a copy of the 2 Month Notice each of the applicants filed the present application to dispute the 2 Month Notice and provided a copy of the respective notices into documentary evidence. In their application the tenant of Unit #2 confirms that they were served saying:

The Two Month Notice was not served to me in person. It was served through an intermediary more than a week after the date appearing on the Notice.

The landlord submits that prior to issuing the bundle of 2 Month Notices they communicated with the tenants of Unit #3 in their capacity as caretaker for the property asking them to assist by distributing the notices. The landlord testified that they were informed by the tenants that all of the occupants of the rental property were served with a copy of the 2 Month Notice for their respective tenancies on December 3, 2020.

The 2 Month Notices submitted into evidence are dated November 23, 2020, gives an effective date of February 1, 2021, are signed by the corporate landlord's agent and provides the reason for the issuance of the notice as:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

A corporate entity is listed as the purchaser of the property. The landlord also submitted into evidence copies of the Buyers Notice to Seller for Vacant Possession signed November 19, 2020 by the Purchaser in attendance at the hearing.

All of the tenants dispute the Good Faith intention of the landlord in issuing the notices. The tenants submit that the corporate entity listed as the purchaser of the rental property was incorporated in the same month as the issuance of the notices, lists only one Director and the evidence provided states that the property will be used by "family and friends" of the purchaser for episodic recreation. The tenants say that it is unlikely that the Purchaser or their family will occupy the multiple rental units including both Mobile Home pads and other site rental units existing on the property. The tenants submitted into evidence a BC Company Search for the corporate purchaser showing one Director, the Purchaser in attendance.

The tenants submit that the portion of their applications seeking an Order for compliance is to dispute the 2 Month Notice.

The Purchaser testified that they requested the landlord issue the 2 Month Notices as they wish to have vacant possession of the rental property. The Purchaser explained that the corporate purchaser is comprised of a group of 28 friends and family members who have been searching for an appropriate property on which they could reside and use a private recreational campground.

The landlord submitted into evidence a letter dated February 8, 2021 signed by the Purchaser and setting out their intention for the property. The Purchaser writes:

We, the purchasers, are a group of friends and family that have raised our families together over the last 25 years, spending most of our holidays on the [rental property area] at a nearby RV resort. It has always been our group's dream to purchase a property and create a private recreational campground with a site for each of our members. Prior to making our offer, we contacted the [Regional district] to make sure the C2 tourist commercial zoning would permit our development plans to accommodate enough RV spots for each of our members.

It is our intention to personally occupy the property and construct a seasonal RV site for each of our members for recreation use.

Analysis

Section 88 of the Act provides the means by which a document, including a 2 Month Notice may be served, setting out in relevant parts:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

...

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

...

(i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

(j) by any other means of service provided for in the regulations.

At the hearing the tenants of Unit #3 confirmed that they were served with the 2 Month Notices by having them left in a conspicuous place on the doorstep of their residence on or about November 23, 2020.

Despite having filed an application to dispute the 2 Month Notice, providing a copy in their own application and stating in their application for dispute resolution that they were served the tenants of Unit #2 and the Big House testified at the hearing that they have not been served and have not seen a copy of the 2 Month Notice.

I do not find the testimony of the tenants disputing service to be particularly credible or convincing. Their testimony contradicts their own earlier submissions in their application, are logically inconsistent as they submitted 2 Month Notices in their own evidence and have no air of reality.

I find that all of the tenants were duly served with the appropriate 2 Month Notice for each of the rental units and in any event have been sufficiently served on December 3, 2020 in accordance with section 71(2)(b) of the *Act*.

When a tenant disputes a Notice to End Tenancy the onus shifts to the landlord to establish, on a balance of probabilities, the basis for the notice. In the present case the 2 Month Notices all indicate that the purchaser or close family members intend to occupy the rental units.

The tenants dispute the intention of the purchaser and cite an absence of "good faith. Residential Tenancy Branch Policy Guideline Number 2 notes that 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.

I find the issue of good faith intention to be immaterial to the matter at hand. I find the more relevant analysis is whether the stated reason for ending the tenancy is supported in the *Act*.

Section 49(5) of the *Act* provides that:

- (5)A landlord may end a tenancy in respect of a rental unit if
 - (a)the landlord enters into an agreement in good faith to sell the rental unit,
 - (b)all the conditions on which the sale depends have been satisfied, and
 - (c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii)the purchaser 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.

A family corporation is defined earlier under section 49(1) as follows:

"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;

The purchaser of the rental property is a corporate entity with the Purchaser who attended the hearing the sole listed Director. No evidence was provided that any other individuals own voting shares in the corporate entity. The Purchaser explained that the corporate entity represents a group of friends and family who intend to occupy the rental units found on the property. The Purchaser did not provide detailed evidence on their familial relationship with the other intended occupants of the property nor did they disclose the distribution of voting shares in the corporate entity.

I am satisfied that the corporate entity purchasing the rental property meets the definition of a family corporation. I accept the evidence of the landlord that the Purchaser is the sole owner of the voting shares of the entity. If the Purchaser was not the sole owner of voting shares or if there were other shareholders who are not siblings or close family

members, the 2 Month Notice would be invalid on its face. I accept that the Purchaser is the sole shareholder of the corporate entity, that the corporate entity is therefore a family corporation as defined under the *Act* and pursuant to section 49(5)(c)(ii) the purchasing corporate entity was able to request that the seller issue a 2 Month Notice.

I find insufficient evidence that the intended occupants of the rental units are the Purchaser's close family members as defined under the *Act*. Close family members is defined in the *Act* as limited to the individual's parents, child, spouse or that spouse's parents or child. Based on the submissions of the Landlord and the Purchaser the intended occupants of the rental property are a group of 14 separate couples. I find insufficient evidence that the intended occupants are close family members of the Director of the corporate purchaser as would be required under the *Act* for a Notice under this section to be effective.

Furthermore, while I accept that the Purchaser, personally intends to occupy some portion of the rental property, I find insufficient evidence as to the specific address they intend to possess. The Purchaser's own testimony alluded to using the rental property to bring in their RV on a seasonal basis. Residential Tenancy Policy Guideline 2A summarizes the law and states that "occupy" means "to occupy for a residential purpose". I find it unlikely that the Purchaser or members of their close family will occupy all three of the dispute addresses. The evidence is that these are fixed-foundation homes and while located on the same rental property, I find it unreasonable to believe that the Purchaser will occupy all of the rental units.

Based on the submissions and evidence of the Purchaser I find it unlikely that they will occupy any of the rental units, under the definition of the *Act*, but instead are seeking to use the site for seasonal and recreational purposes to accommodate their RV.

I find that, based on the totality of the evidence of the parties, that I am not satisfied that the three rental units in dispute will be occupied by the purchaser. Accordingly, I allow the tenants' applications and cancel each of the 2 Month Notices. The tenancy for each dispute address continues until ended in accordance with the *Act*.

As the tenants were successful in their application, they are entitled to recover the filing fee from the landlord. As these tenancies are continuing, I allow the tenants to each make a one-time deduction of \$100.00 from their next scheduled rent payment to the landlord in satisfaction of this monetary award.

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Conclusion

The applications of the tenants to cancel the 2 Month Notices is granted. The 2 Month Notices are of no further force or effect. These tenancies continue until ended in accordance with the *Act*.

The tenants for each of the three tenancies are authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment to the landlord.

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 12, 2021

Residential Tenancy Branch