



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1078263BC LTD c/o Sutton Select Property
MNGT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49.

The agent BS attended for the corporate landlord. The tenant attended. Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Each party confirmed the email address to which the Decision and any Order will be sent.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The tenant submitted a copy of the tenancy agreement.

The parties agreed on the following background of the tenancy:

INFORMATION	DETAILS
Type of tenancy	monthly
Date of beginning	May 1, 2006
Date of ending	ongoing
Monthly rent payable on 1 st	\$794.56
Security deposit	\$392.50
Pet deposit	no
Outstanding rent at time of hearing	none

The tenant described her unit as a 2-bedroom older, dated apartment on the second floor in a 3-floor walk up that she has been renting for fifteen years. She does not want to move out. She testified that the rent is “far below market value” and has certain services not available to other tenants such as included parking, storage space and cablevision.

The parties agreed on the following. The landlord issued a Two Month Notice to the tenant the details of which are as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice
Date of Notice	March 22, 2021
Effective Date of Notice	May 31, 2021
Date and Method of Service	Registered mail, sent March 22, 2021
Effective Date of Service	March 27, 2021
Application filed by Tenant	Apr 1, 2021

The Notice provides the reason for issuance as follows:

The landlord is a family corporation and a person owing voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The parties agreed that this is the fourth such notice issued by the landlord in less than two years. The tenant filed an Application for Dispute Resolution to dispute each one. All her previous three Applications for Dispute Resolution were successful, and the Two Month Notices were vacated.

The hearing dates are as follows; this is the fourth hearing in a year and a half. The corresponding file numbers are referenced on the first page.

1. January 16th, 2020
2. April 3rd, 2020
3. March 5th, 2021

The agent BS representing the landlord testified as follows. The corporate landlord purchased the building a few years ago. The landlord is a BC registered company. The sole officer, director, and shareholder is HB whose full name appears on the first page. The agent submitted an email from "MB" dated March 8, 2021; the full name appears of the first page. The agent stated that HB and MB are married. The couple, now living in another municipality in the province, intend to sell their home and move into the tenant's unit.

The email from MB stated that MB would "like to occupy the unit" but does not state what her relationship is, if any, with HB, or whether HB will be occupying the unit. There is no signature.

Neither HB nor MB were called as witnesses.

The tenant asserted that the landlord is not a family corporation within the meaning of the Act.

The tenant testified to her belief that the Two Month Notice was not issued in good faith. Her reasons are as follows:

1. the landlord intends to sell the unit and make the income of the building more attractive to a potential buyer by getting her out and increasing the rent;
2. the landlord intended to increase the rent, possibly after a cosmetic renovation, and occupants other than HB would move in, and/or
3. the landlord's motivation is to get the tenant out because of her tenant advocacy.

As to her first reason, the tenant testified that the landlord wants her to move out to increase the amount of rent for the building to make it more attractive to sell. The parties agreed the landlord listed the building for sale on January 27, 2021; the Two Month Notice was issued about two months later.

The tenant submitted a copy of the listing brochure for the building which provided the monthly rent for each of the units.

Secondly, the tenant testified that some of the units have been given a "cosmetic reno", following which they were rented for about the double the previous rent. The tenant also submitted a copy of ads to illustrate her assertion. One such ad dated May 6, 2021 for a 1-bedroom unit in the building was for \$1,600.00 monthly. Based on this information, the tenant testified she believed that the landlord could substantially increase the rent of her unit with minimal outlay of cosmetic renovations and intended to do so.

Finally, the tenant testified to her belief that the landlord wants her to move out because she has experience working in tenancy matters and is a known advocate of which the landlord disapproves.

The tenant asserted that HB does not intend to occupy the unit as evidenced by the fact that HB has not attended or submitted evidence.

The tenant testified as follows. She has been singled out by the landlord because of these factors, or a combination thereof. She is under relentless pressure to move out. The tenant provided an example of the pressure tactics she alleged that the landlord is using in addition to issuance of multiple Two Month Notices. Her medical condition required use of walking assistance – wheelchair, walker, and cane. She owned a rehabilitative treadmill which the previous owner had authorized her to keep in a common area of the building. The tenant testified that when the landlord purchased the building, she wrote the landlord a letter on May 3, 2018 informing the landlord of the history of the matter. She testified that the landlord did not reply. Instead, she stated

that the treadmill was removed on July 24, 2019 by an agent of the landlord and she has not seen it since. The tenant testified that she intended to bring an application to the RTB for damages for the removal of her treadmill and for other relief.

The agent BS responded to the tenant's allegations in turn.

Firstly, the agent stated that he is not aware of any motivation of the landlord or HB except for personal occupation of the unit.

With respect to the second reason, the agent acknowledged that the unit was listed for sale at the time the Two Month Notice was issued. However, the agent testified at the hearing that the listing ended shortly before the hearing. He denied that increased rental income for the building was a motive.

Finally, the agent acknowledged that the tenant's treadmill had been removed but denied the accuracy of the tenant's version of events. The agent stated that the item had been removed after fair notification to the tenants.

The landlord requested an Order of Possession. The tenant requested the Two Month Notice be dismissed.

Analysis

Section 49 of the Act allows a landlord to end a tenancy on a date that is not earlier than two months after the date the tenant receives the notice or if the tenancy is for a fixed term not earlier than the date specified as the end of the tenancy in the agreement, if they, in good faith, plan to move into the rental unit.

The tenant sought a cancellation of the landlord's Two Month Notice.

The tenant questioned the good faith of the Notice.

Residential Tenancy Branch Policy Guideline number #2 examines the issue of ending a tenancy for landlord's use of property. It 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.

This Guideline reads in part as follows:

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.

Since the good faith intent of the landlord is called into question in this case, 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.

The agent asserted that HB intended to occupy the unit, the sole shareholder of the corporate landlord. However, no evidence from HB was submitted and HB was not called as a witness. I find the unsigned email from MB is not evidence from HB.

I have considered the landlord's acknowledgement that the building was listed for sale when this Notice was issued. I have considered the tenant's evidence including her credible suggestion of potential increased rental for the unit if the tenant moved out.

I have reached this conclusion after hearing the testimony and finding that the tenant's version of events is the more believable and best supported by documentary evidence. In all aspects, where the parties' evidence conflicts, I prefer the tenant's testimony as the more plausible.

I accept the tenant's her testimony that she is disturbed and upset by conduct of the landlord. I find her evidence believable that she did not give permission for the removal of her rehabilitative treadmill. I find her testimony credible that the landlord wants to get

rid of a troublesome tenant and that this is one of the contributory reasons for the Notice.

I find that the issuance of the fourth Two Month Notice leading to four hearings in 18 months combined with the other factors indicates the landlord may have another purpose in ending the tenancy.

I find the landlord's failure to provide adequate evidence at the fourth such hearing to be puzzling.

I therefore find that the landlord has not met the burden of proof on a balance of probabilities that the intention in issuing the Notice is to have HB reside in the unit or that the landlord is a family corporation.

As a result of my findings, I grant the tenant's application to cancel the Two Month Notice.

As I have cancelled the Notice, I direct that the tenancy continues until ended in accordance with the agreement and the Act.

I warn the landlord about a possible claim by the tenant for damages including a claim for loss of quiet enjoyment.

Conclusion

The Two Month Notice is cancelled, and the tenancy continues until ended in accordance with the agreement and 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: July 29, 2021

Residential Tenancy Branch