Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FFT

Introduction

This hearing was convened to consider four Applications for Dispute Resolution regarding rental units on the same residential property.

The Tenant with the initials “NS” filed an Application for Dispute Resolution relating to unit 2183, naming the Respondent with the initials “IJ” . The Tenant with the initials “LM” filed an Application for Dispute Resolution relating to unit 2181, naming the Respondents with the initials “IJ” and “CJ”. The Tenant with the initials “LH” filed an Application for Dispute Resolution relating to unit #6, naming the Respondent with the initials “IJ” and “VJ”. The Tenant with the initials “DH” filed an Application for Dispute Resolution relating to unit #5, naming the Respondent with the initials “IJ” and “DJ”.

All Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing an Application for Dispute Resolution.

The Advocate for the Tenants stated that on April 29, 2021 the Dispute Resolution Package relating to unit 2183 and evidence submitted to the Residential Tenancy Branch in April were sent to “IJ”, via registered mail. Legal Counsel for the Respondents acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Advocate for the Tenants stated that on April 29, 2021 the Dispute Resolution Package relating to unit 2181 and evidence submitted to the Residential Tenancy Branch in April were sent to “IJ” and “CJ”, via registered mail. Legal Counsel for the

Respondents acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Advocate for the Tenants stated that on April 29, 2021 the Dispute Resolution Package relating to unit 6 and evidence submitted to the Residential Tenancy Branch in April were sent to “IJ” and “VJ”, via registered mail. Legal Counsel for the Respondents acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Advocate for the Tenants stated that on April 29, 2021 the Dispute Resolution Package relating to unit 5 and evidence submitted to the Residential Tenancy Branch and the Notice of Hearing were sent to “IJ” and “DJ”, via registered mail. Legal Counsel for the Respondents acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On August 11, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. Legal Counsel for the Respondents stated that this evidence was served to each Tenant, via registered mail, on August 10, 2021. The Advocate for the Tenants acknowledged this evidence was received by the Tenants and it was accepted as evidence for these proceedings.

The Advocate for the Tenants stated that on August 04, 2021, additional evidence was submitted to a Service BC Centre. He stated that this evidence was served to each Respondent, by registered mail, on August 03, 2021. Legal Counsel for the Respondents acknowledged receipt of this evidence.

The parties were advised that I was unable to locate the August 04, 2021 evidence submission. As the evidence was served to the Respondents and it is quite possible the evidence was not properly uploaded after it was submitted to Service BC, due to human error, I permitted the Tenants to re-submit this evidence to the Residential Tenancy Branch. This evidence was uploaded prior to the end of the hearing and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

The participants were advised that employees of the Residential Tenancy Branch were observing the proceedings but were not participating in the proceedings in any way. As the observers were not participating, they were not asked to identify themselves nor will they be identified as participants in these proceedings.

Issue(s) to be Decided

Should the Two Month Notices to End Tenancy for Landlord's Use be set aside?
Are the Tenants entitled to recover the fees paid for filing Applications for Dispute Resolution?

Background and Evidence

The Respondents and the Tenants agree that:

- LH's tenancy began in 1983 and she is currently required to pay rent of $580.00 by the first day of each month;
- DH's tenancy began in 1989 and he is currently required to pay rent of $580.00 by the first day of each month;
- NS's tenancy began in 2005 and he is currently required to pay rent of $784.00 by the first day of each month;
- LM's tenancy began in 1980 and she is currently required to pay rent of $719.00 by the first day of each month;
- 2181 and 2183 are a side-by-side duplex located on the same residential property as a residential complex with 9 suites, all of which are owned by the same Landlord; and
- #5 and #6 are located in the larger residential complex.

Legal Counsel for the Respondents stated that a Two Month Notice to End Tenancy for Landlord's Use naming "LM" was personally served to "LM" on March 29, 2021. "LM" acknowledged personally receiving this Notice to End Tenancy on March 29, 2021.

This Notice to End Tenancy is signed by “CJ”, it declares that the unit will be occupied by the landlord or the landlord’s spouse, and it declares the unit must be vacated by May 31, 2021.

Legal Counsel for the Respondents stated that a Two Month Notice to End Tenancy for Landlord's Use naming “NS” was personally served to “LM” on March 29, 2021. “NS” stated that this Notice to End Tenancy was given to him by “LM” on March 29, 2021. This Notice to End Tenancy is signed by “IJ”, it declares that the unit will be occupied by the landlord or the landlord’s spouse, and it declares the unit must be vacated by May 31, 2021.

Legal Counsel for the Respondents stated that a Two Month Notice to End Tenancy for Landlord's Use naming “LH” was personally served to “LH” on March 29, 2021. “LH” acknowledged personally receiving this Notice to End Tenancy on March 29, 2021. This Notice to End Tenancy is signed by “VJ”, it declares that the unit will be occupied by a child of the landlord or the landlord’s spouse, and it declares the unit must be vacated by May 31, 2021.

Legal Counsel for the Respondents stated that a Two Month Notice to End Tenancy for Landlord's Use naming “DH” was personally served to “LH” on March 29, 2021. “DH” stated that this Notice to End Tenancy was given to him by “LH” on March 29, 2021. This Notice to End Tenancy is signed by “DJ”, it declares that the unit will be occupied by a child of the landlord or the landlord’s spouse, and it declares the unit must be vacated by May 31, 2021.

The Respondents and the Tenants agree that the residential property was purchased by the numbered company named on the first page of this decision in March of 2021. Legal Counsel for the Respondents submits that this numbered company does business as AE, the full name of which appears on the first page of this decision.

Legal Counsel for the Respondents submits that the numbered company is owned by the four Respondents. The Advocate for the Tenant stated that he does not know who owns the numbered company.

A BC Company Summary submitted in evidence shows that “VJ” is the director of the numbered company.

Documents submitted in evidence show that the Tenants were advised that the rental units were being managed by AE. "CJ" stated that AE is jointly owned by IJ, CJ, and VJ.

The Tenants submitted a Government of Alberta document that shows "VJ" is the director of AE 100% voting shareholder.

At the hearing Legal Counsel for the Respondents requested that I amend the Two Month Notices to End Tenancy for Landlord's Use, pursuant to section 68 of the *Act,* to reflect that the tenancies are ending pursuant to section 49(4) of the *Residential Tenancy Act (Act*). In support of the application to amend the Notices to End Tenancy Legal Counsel for the Respondents acknowledged that by selecting the incorrect box on the Notices, the persons completing the Notices to End Tenancy incorrectly declared that the Landlord was ending the tenancy pursuant to section 49(3) of the *Act.*

Section 49(3) of the *Act* permits a landlord who is an individual to 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. (Emphasis added). Section 49(4) of the *Act* permits a landlord that is a family corporation 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. (Emphasis added)

In support of the application to amend the Notices to End Tenancy Legal Counsel for the Respondents submits that it is apparent from the written submission of the Advocate for the Tenants that the Tenants knew the Respondents were a family corporation.

The Advocate for the Tenants stated that after approximately 20 hours of research he was able to determine that the Landlord was a numbered company. He stated that this information was available to the Tenants prior to these Applications for Dispute Resolution being filed.

The Advocate for the Tenants was asked if any of the Tenants would be prejudiced by a decision to amend the Two Month Notices to End Tenancy for Landlord's Use. He stated that if the Notices to End Tenancy were not amended it is likely the Notices to End Tenancy would be dismissed and the Tenants would be able to remain in their rental units for at least another two months, presuming the Landlord served the Tenants with new Two Month Notices to End Tenancy for Landlord's Use pursuant to section 49(4) of the *Act*.

The Advocate for the Tenants further stated that the Tenants will agree to amend the Two Month Notices to End Tenancy for Landlord's Use if the Landlord will agree that any Orders of Possession arising from these proceeding be effective not earlier than October 31, 2021. He submits that any possible prejudice to the Tenants, in the event they are not successful at these proceedings, would be allayed by this agreement.

Legal Counsel for the Respondents stated that the Landlord is willing to agree to an Order of Possession that is effective not earlier than October 31, 2021, providing the Two Month Notices to End Tenancy for Landlord's Use are amended and the hearing proceeds today.

In support of the applications to cancel the Two Month Notices to End Tenancy for Landlord's Use, the Advocate for the Tenants submits that “CJ” has identified himself as a caretaker of the residential complex and if he wished to move into 2183 the Landlord that tenancy should have been ended pursuant to section 49(6)(e) of the *Act*.

In support of the Two Month Notices to End Tenancy for Landlord's Use, Legal Counsel for the Respondents submits:

- “IJ” intends to move into unit 2183, which is approximately 630 square feet in size;
- “CJ” to move into unit 2181, which is also approximately 630 square feet in size;
- “IJ” and “CJ” are married, but want to have separate bedrooms;
- “IJ” and “CJ” intend to install a door between units 2183 and 2181;
- By joining the two units “IJ” and “CJ” can each have a bedroom in the same home, including space for their grandchildren to stay overnight;
- “IJ” and “CJ” wish to occupy 2181/2183 because it has access to a yard, which can be used by their grandchildren;
- “IJ” and “CJ” are currently living in an apartment in a neighbouring community, which is smaller than 2181 and 2183 together;
- “IJ” and “CJ” have each signed an affidavit attesting to their intent to occupy 2181/2183, which were submitted as evidence;
- “VJ”, his wife and his 3 children intend to live in unit 6;
- **“**VJ” intends to live in unit 6, in part, so his children can be close to their grandparents, who assist with childcare;
- Unit 6 is approximately 930 square feet in size, with one bedroom and one den;
- **“**VJ” currently lives in his own home;

- **“**VJ” has entered into a contract with a realtor to list his home, but it has not yet been listed for sale;
- “VJ” has signed an affidavit attesting to his intent to occupy unit 6, which was submitted as evidence;
- “DJ”, his wife and his 2 children intend to live in unit 5;
- Both of DJ’s children still sleep in cribs;
- “DJ” intends to live in unit 5, in part, so his children can be close to their grandparents, who assist with childcare;
- Unit 5 is between 900 and 950 square feet in size, with one bedroom and one den;
- “DJ” and his family currently live in a 900 square foot rented apartment;
- “DJ” has signed an affidavit attesting to his intent to occupy unit 5, which was submitted as evidence;
- Units 5 and 6 are on the second floor, which would provide “DJ” and “VJ” with access to the roof, which could be adapted for use as outside space with minor renovations;
- The roof is currently not used as common living space;
- Units 5 and 6 are desirable because they face away from traffic;
- The allegations of bad faith are speculative;
- The Respondents fully intend to move into the units;
- There were no ulterior motives for serving the Two Month Notices to End Tenancy for Landlord's Use; and
- There are no vacant units in the residential complex, although on August 01, 2021 a tenant gave notice to end their tenancy.

“IJ” stated that:

- The photographs of boxes that were submitted in evidence are boxes of personal items they have stored in the basement of the residential complex, in anticipation of moving into the 2181/2183;
- She and her husband want to move into a larger space so they will each have their own bedroom and own bathroom, plus space for their grandchildren;
- They currently provide childcare to their grandchildren in their rented home; and
- The additional space and yard will make it easier to provide childcare for their grandchildren, who will sometimes stay overnight.

In support of the bad faith argument the Advocate for the Tenants submits, in part, that the Landlord was attempting to deceive the Tenants by naming individuals on the Two Month Notices to End Tenancy for Landlord's Use, rather than naming the numbered company that actually owns the rental units.

Legal Counsel for the Respondents submits that by naming individuals on the Two Month Notices to End Tenancy for Landlord's Use the Landlord, rather than the numbered company, the Landlord was identifying the people who will be actually moving into the unit. She submits that there was no attempt to misrepresent the Landlord as an individual, as the Landlord provided the Tenants with written notice, in March of 2021, that AE was the new management company.

In support of the Applications for Dispute Resolution the Advocate for the Tenants submits that the information provided to the Tenants has been inconsistent, misleading, and confusing. In support of this submission the Advocate for the Tenant stated that in addition to “IJ” identifying herself as the property manager, the AE website identifies “Vesna” as the property manager.

Legal Counsel for the Respondents stated that the AE website identifies “Vesna” as a manager with AE, that she works in Alberta, and she does not manage this residential property.

In support of the bad faith argument the Advocate for the Tenants submitted website information relating to AE. This website information declares that AE’s mission is to buy “existing and neglected multi-family housing apartments and outsource renovation and maintenance to local businesses. Our goal is to increase cost-effectiveness through renovations and maintain high efficiency throughout the process; from closing to renting. Doing this allows us to provide renters with competitive rates and high-end, modern units!” In regard to this specific property, the website declares that “our goal is to take this neglected building and develop the property into a modern well-maintained building, while also keeping true to the historical importance it has within the community”.

The Advocate for the Tenants submits that the AE website establishes the Respondents’ intent to renovate and re-rent the units. He submits it is not coincidental that the tenants receiving the Two Month Notices to End Tenancy for Landlord's Use are the Tenants in the complex who are currently paying the least amount of rent.

The Advocate for the Tenants stated that the AE website shows that this property is for sale.

“VJ” stated that:

- There have been numerous issues with the AE website;
- They are attempting to correct some of the errors on the website, some of which have been corrected;
- AE does not own all of the properties listed on the website;
- There are no plans to demolish or make any major renovations in the residential complex, with the exception of adding a door between 2181 and 2183;
- They will make improvements to common areas in the residential complex, but no significant renovations;
- The AE website incorrectly shows the residential property is for sale;
- The residential property is not for sale;
- If the residential property was actually for sale, one would expect to find it advertised on other sites; and
- It is not advertised for sale on other sites.

In support of the bad faith argument the Advocate for the Tenants stated that this residential property was the subject of a heritage review in February of 2020 which resulted in an application to redevelop the building being cancelled. He submits that this review reduced the sale price of the property as any future plans to demolish or renovate the building would be subject to a heritage review.

The Advocate for the Tenants further submits that serving the Two Month Notices to End Tenancy for Landlord's Use was a means of circumventing City’s “Tenant and Relocation Policy”, which requires developers to financially compensate tenants who are permanently displaced as a result of demolition/major renovations. He submits the Tenants who were served with Two Month Notices to End Tenancy for Landlord's Use were the tenants have lived in the complex longer than other occupants and would, therefore, be entitled to greater compensation, as compensation is based on length of tenancy.

Legal Counsel for the Respondents stated that the heritage review of 2020 and the subsequent cancellation of a redevelopment application is irrelevant, as that occurred over a year prior to the Landlord purchasing this property. She stated that the Landlord does not intend to demolish the property or to make major renovations and, as such, the

need for a heritage review or any financial costs associated to the City's "Tenant and Relocation Policy" are not relevant to the Landlord.

In support of the bad faith argument the Advocate for the Tenants stated that the Respondents are very wealthy and that it "makes no sense" they would want to live in these rental units. He argues it is not believable that the Respondents would want to live in these rental units because:

- The units do not have laundry facilities, dishwashers, or balconies;
- 2181 and 2183 were built in 1908 and are in very poor condition;
- The photographs of 2181 and 2183 submitted in evidence show they are in very poor condition;
- 2181 and 2183 are not insulated;
- 2181 and 2183 do not have a concrete foundation;
- 2181 and 2183 have a wooden floor that is not insulated;
- 2181 and 2183 have a furnace in the living room that does not adequately heat the rest of the unit;
- 2181 and 2183 do not have sinks in the bathroom;
- He has seen the exterior of the building "CJ" and "IJ" currently live in and he is certain it is nicer than 2182 and 2183;
- The apartment building was built in 1910;
- Unit 6, which "VJ" intends to move into is too small for a husband and wife with 3 small children;
- "VJ" is currently living in an expensive home that is much larger than unit 5;
- Unit 5, which "DJ" intends to move into is too small for a husband and wife with 2 small children; and
- "DJ" is currently living in a two bedroom rented suite, which is larger and nicer than unit 5.

Legal Counsel for the Respondents submits that:

- The Tenants are making an "overarching assumption" about the financial status of the family, which is not supported by the Respondents' testimony and affidavits;
- The Respondents are not a rich family;
- Some improvements have been made to the exterior of 2181 and 2183 since the photographs submitted in evidence were taken;
- Changes can be made to 2181 and 2183 which will make them more habitable, such as adding sinks to the bathrooms and upgrading the heating; and

- 2181 and 2183, when combined and upgraded will be better than the “IJ”s and “CJ”s current rented home.

In the affidavit signed by “IJ”, she declared that she and “CJ” are currently living in a rental unit, for which they pay $1,635.00 in rent/parking. She declares that she wishes to live in the rental unit, in part, so she can contribute to the mortgage on the property.

In the affidavit signed by “CJ”, he declared that he wishes to live in the rental unit, in part, so he can contribute to the mortgage on the property without paying rent elsewhere.

In the affidavit signed by “DJ”, he declared that he wishes to live in the rental unit, in part, so he can help with the mortgage on the property by paying rent and that he currently pays rent of $2,990.00.

In the affidavit signed by “VJ”, he declared that he wishes to live in the rental unit, in part, so he can help with the mortgage on the property by paying rent.

“VJ” stated that:

- He is currently living in a home which he owns;
- The home is approximately 3,000 square feet;
- He purchased the home approximately 1.5 years ago;
- He purchased the home for 2.35 million dollars;
- He is selling this house because there has been a change in his financial picture and he is trying to save money;
- His business is not currently doing well;
- He will save money by moving into the rental unit;
- His children are 2, 4, and 7 years old;
- Two of the children will stay in bunkbeds in the den; and
- One child will stay in the bedroom.

The Tenants submitted a photograph of the home where “VJ” is currently living, which is clearly a valuable property. The Tenants also submitted photographs of the home where “DJ” is currently renting. The Advocate for the Tenants submit that these homes are significantly different in quality than the units 5 and 6.

“DJ” stated that:

- The photographs of his rental unit are from 2016 and do not depict the current condition of the unit;
- His apartment is not “high end”;
- There is mold in the bathroom of his apartment;
- He cannot afford the rent on this apartment;
- Unit 5 is larger than his current apartment; and
- His children are still in cribs, which they will keep either in the bedroom or the den.

“LH” stated that:

- Her rental unit (#6) does not have a den;
- Her unit is not 930 square feet in size;
- Her unit has a kitchen, a separate living room, a bathroom, and one bedroom;
- She recently measured her unit;
- Her entire unit is approximately 700 square feet in size;
- Her kitchen is approximately 154 square feet in size;
- The roof is not currently used as outside space;
- Her unit is not quiet as it is a corner unit that faces a busy street and the alley; and
- None of the Respondents have been in her unit.

“CJ” stated that:

- He recently measured unit 8, which is 930 square feet in size;
- Unit 8 is similar in size to unit 6; and
- He has not measured unit 6.

“DJ” stated that:

- Unit 6 has a large, open style kitchen which could serve as a kitchen and living room;
- The room “LH” refers to as a living room is a den; and
- He has never been in unit 6, but it is similar to two other units which have kitchens that are 215 square feet and 207 square feet.

Analysis

On the basis of the undisputed evidence, I find that each Tenant received a Two Month Notice to End Tenancy for Landlord's Use, served pursuant to section 49 of the

Residential Tenancy Act (Act), on March 29, 2021. Regardless of whether these Notices to End Tenancy were personally served to the Tenant by the Landlord/ Landlord's agent or they were given to a third party who then subsequently gave them to the Tenant, I find that the Notices were sufficiently served to each Tenant on March 29, 2021, pursuant to section 71(2)(b) of the *Act*.

Section 49(3) of the *Act* permits a landlord who is an individual to 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. (Emphasis added).

On the basis of the undisputed evidence and documents submitted in evidence, I find that all of these rental units are owned by a numbered company and are managed by AE.

As the units are not owned by an individual, the Landlord does not have the right to end the tenancy pursuant to section 49(3) of the *Act*.

Section 49(4) of the *Act* permits a landlord that is a family corporation 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. (Emphasis added)

Section 49 defines a "family corporation" as a corporation 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 49 of the *Act* defines a "close family member" as an individual's parent, spouse or child, or the parent or child of that individual's spouse.

On the basis of the undisputed evidence, I find that "IJ" and "CJ" are married and that the other two Respondents are their children. As there is no evidence that anyone other than the Respondents own the numbered company or have voting shares in the company, I find that the rental unit is owned by a family corporation, as that term is defined by section 49 of the *Act*. I would conclude that the rental units are owned by a family corporation regardless of whether it is owned by one or more of the Respondents. Given the familial relationship of the Respondents, it would be reasonable to conclude that they are able to act as agents for the Landlord, even if they do not own a part of the family corporation.

As the rental units are owned by a family corporation, I find that Landlord has the right to end this tenancy, pursuant to section 49(4) of the *Act,* if any one of the four Respondents, who are close family members, intend, in good faith, to occupy the rental unit.

On the basis of the Two Month Notices to End Tenancy for Landlord's Use that were submitted in evidence, I find that the Notices declared the tenancies were ending because the units would be occupied by either the landlord/ the landlord's spouse or a child of the landlord/the landlord's spouse. I find that these Notices to End Tenancy incorrectly declare that the tenancies were ending pursuant to section 49(3) of the *Act.*

In the event the Landlord wished to give notice to end the tenancies pursuant to section 49(4) of the *Act*, the persons preparing the Two Month Notices to End Tenancy for Landlord's Use should have selected the option which reads:

> *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.*

Section 52(d) of the *Act* stipulates that to be effective, a notice to end a tenancy must be in writing and must, except for a notice under section 45 (1) or (2), state the grounds for ending the tenancy. I find it reasonable to conclude that section 52(d) of the *Act* requires that the Notice to End Tenancy give the correct reason for ending the tenancy. As the Two Month Notices to End Tenancy for Landlord's Use serve to end the tenancy pursuant to section 49(3) of the *Act*, rather than section 49(4) of the *Act*, I find that the Notices to End Tenancy do not comply with section 52(d) of the *Act*.

Section 68(1) of the *Act* authorizes me to amend a Notice to End Tenancy that does not comply with section 52 of the *Act* if I am satisfied the person receiving the Notice knew, or should have known, the information that was omitted from the Notice and, in the circumstances**,** it is reasonable to amend the Notice.

On the basis of the Advocate for the Tenants' testimony that the Tenants knew the Landlord was a numbered company prior to filing these Applications for Dispute Resolution being filed, I find it reasonable to conclude that that Tenants understood the tenancy was being ended pursuant to section 49(4) of the *Act*, rather than section 49(3) of the *Act.*

I find that it is readily apparent, from the written submissions of the Advocate for the Tenants, that the Tenants were prepared to dispute the Two Month Notices to End Tenancy for Landlord's Use on the basis of the Landlord being a numbered company. I therefore concluded that it was reasonable, in these circumstances, to amend the Notices to End Tenancy to reflect that the tenancies are ending pursuant to section 49(4) of the *Act*.

Residential Tenancy Branch Policy Guideline #11 reads, in part, that in determining whether it is reasonable in the circumstances to amend a notice to end tenancy, "an arbitrator may look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice".

I agree with the Advocate for the Tenants' submission that if the Two Month Notices to End Tenancy for Landlord's Use were not amended it is possible the Notices to End Tenancy would be set aside, which would enable to Tenants to remain in their rental units for at least another two months, presuming the Landlord served the Tenants with new Two Month Notices to End Tenancy for Landlord's Use prior to August 31, 2021.

My conclusion that it was reasonable to amend the Two Month Notices to End Tenancy for Landlord's Use in these circumstances was heavily influenced by the fact the Tenants and the Landlord agreed the Notices to End Tenancy could be amended on the condition that any Orders of Possession that flow from these proceedings will be effective on, or after, October 31, 2021. As a result of this agreement, any Orders of Possession awarded as a result of these proceedings will be effective on, or after, October 31, 2021. I find this agreement allays any prejudice the amendments may have on the Tenants.

Regardless of whether or not "CJ" acts as a caretaker for this residential complex, I find that the Two Month Notice to End Tenancy for Landlord's Use that was served in relation to 2181 did not need to be served pursuant to section 49(6)(e) of the *Act*. Section 46(e) of the *Act* authorizes a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Even if "CJ" is a caretaker of the complex, he is also a either an owner of the family corporation or a close family member of an owner of the family corporation that owns

the residential property. I therefore find that the Two Month Notice to End Tenancy for Landlord's Use served in relation to 2181 should have cited section 49(4) of the *Act,* as I would consider that the primary reason for ending the tenancy.

In regard to ending a tenancy pursuant to section 49 of the *Act*, Residential Tenancy Branch Policy Guideline #2A, reads, in part:

In Gichuru v Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

As the Tenants have raised the issue of “good faith”, I find the onus is on the Landlord to prove the Respondents intend, in good faith, to occupy the rental units.

In considering the issue of good faith, I cannot conclude that the Landlord was intentionally attempting to deceive or mislead the Tenants by naming the Respondents on the Two Month Notices to End Tenancy for Landlord's Use, rather than naming the numbered company that owns the units. I accept the Landlord’s submission that the Respondents did so in an attempt to identify the individual(s) who will be moving into the unit which, in my view, is an attempt to be transparent, rather than an attempt to deceive.

On the basis of the undisputed evidence that Landlord provided the Tenants with written notice, in March of 2021, that AE was the new management company, I cannot conclude that the Landlord was attempting to misrepresent the Landlord as an individual.

I find it highly unlikely that the Landlord was attempting to deceive the Tenants by naming the Respondents on the Two Month Notices to End Tenancy for Landlord's Use, as it has little impact on the merits of the Notices. Regardless of whether a landlord is an individual or a company, the landlord is obligated to prove that the person moving into the rental units is a close family member of the landlord who intends, in good faith, to occupy the unit.

In adjudicating this matter, I have placed no weight on the Tenants' submission that the AE website that identifies "Vesna" as a manager is misleading or confusing. As this information was obtained from the AE website by the Advocate for the Tenants, it was never provided to the Tenants in regard to their tenancies, and there is nothing to indicate "Vesna" is involved with these tenancies, I find that this submission is not relevant to these Two Month Notices to End Tenancy for Landlord's Use.

On the basis of the AE website, I find that AE's mission is to renovate and upgrade rental properties. As AE is closely linked to the family corporation that owns the rental units, I find it reasonable to conclude that the Respondents are in the business of renovating and upgrading rental properties.

On the basis of the AE website that mentions this specific property, I find that the Landlord intends to "develop the property into a modern, well maintained rental property". This declaration suggests that at least some cosmetic renovations will occur. This finding is supported by the Landlord's submission that 2181 and 2813 can be improved by adding sinks to the bathrooms and upgrading the heating, by the submission that 2181/2183 will be joined, and by the submission that common areas will be improved.

I specifically note that there is nothing in the evidence that suggests the residential property will be demolished or that it will undergo renovations that require the occupants to vacate their rental suites. I therefore cannot conclude that the Landlord has plans to end the occupancy of other tenants in the building for the purpose of major renovations.

I note that the intent to renovate a large residential property and to occupy a portion of that residential property for a period of six months or more is not mutually exclusive. In my view, a landlord has the right to end a tenancy if the landlord/close family member wishes to live in a rental unit for a period of at least six months while the landlord is renovating or upgrading the residential property. This position is supported by Residential Tenancy Branch Policy Guideline 2A which reads, in part:

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. (Emphasis added)

I find that even if the Landlord has future plans to renovate this residential complex, I find it entirely possible that close family members of the Landlord would like to occupy a unit(s) in the property while planning and completing those renovations. I therefore cannot conclude that these Two Month Notices to End Tenancy for Landlord's Use have been served in bad faith simply because the Respondents are in the business of renovating rental properties.

I find the heritage review that occurred in February of 2020 and the subsequent cancellation of an application to redevelop the building does not establish the Two Month Notices to End Tenancy for Landlord's Use were served in bad faith, as the application to redevelop the property was not made by this Landlord and the heritage review occurred approximately one year prior to the Landlord purchasing this property.

I find the submission that the Two Month Notices to End Tenancy for Landlord's Use were served as a means of circumventing City's "Tenant and Relocation Policy", which requires developers to financially compensate tenants who are permanently displaced as a result of demolition/major renovations, is highly speculative. As there is no evidence that the Landlord plans to demolish or make major renovations to the residential complex, I cannot conclude that the Landlord would be required to pay compensation as a result of that policy.

In adjudicating this matter, I have placed no weight on the Tenants' submission that the AE website declares the rental property is for sale. I find that this is likely an error on the website, as "VJ" submits, and is, therefore, largely irrelevant. In concluding that the information is likely an error I was influenced by "VJ"s testimony that the residential property is not for sale and by the absence of evidence that shows the property is advertised for sale on other sites, which one would expect if it is actually for sale. In concluding that the information is likely an error, I was further influenced by my

conclusion that selling the property is in direct conflict with AE's stated goal to develop the property into a modern, well maintained building.

In the absence of evidence that convinces me the Landlord is ending these tenancies because the Landlord intends to make major renovations to the residential complex or rental units, I am left to determine whether the Respondents intend, in good faith, to live in the rental units.

Typically, I do not consider personal wealth when determining whether a landlord is ending a tenancy, in good faith, for the purposes of moving into a rental unit. Regardless of financial circumstances, all landlords should have the option of living frugally if that is their wish, particularly if they have the opportunity to live in rental property that they own.

When a landlord/close family member is alleging that they are moving into a rental unit for financial reasons, as is the case with "DJ" and "VJ", I find it reasonable to consider personal finances, particularly when the parties are currently living in significantly better accommodations.

On the basis of the undisputed evidence, I find that "IJ" and "CJ" are currently living in a rented apartment, for which they pay $1,635.00 in monthly rent/parking. I find that there is insufficient evidence to establish that the home they are currently renting is significantly better than units 2181 and 2183, once those two units are joined. Although I accept the Tenants' submission that those units are currently not in good condition, I find that with some relatively minor renovations could be made comparable to their current accommodations.

As "IJ" and "CJ" are not currently paying significantly more rent than they are earning from 2181 and 2813, they will be paying rent that is similar to the amount they are currently paying, and they will not be moving into significantly "lesser" accommodations, I find their financial status is not relevant to my decision in this matter.

On that basis of the undisputed evidence, I find that "VJ" is currently living in a $3,000.00, multi-million dollar home that he owns. Although he asserts that he is selling this house because there has been a change in his financial picture, he is trying to save money, and his business is not doing well, no evidence was submitted that corroborates this submission. As the onus is on the Landlord to establish good faith, I find it reasonable that the Landlord would submit some sort of documentary evidence, such as

financial statements or income tax reports, when they purport to be “downsizing” for financial reasons.

Although “DJ” asserts that he cannot afford to pay his current rent of $2,990.00, he submitted no evidence to corroborate this submission. As the onus is on the Landlord to establish good faith, I find it reasonable that the Landlord would submit some sort of documentary evidence, such as financial statements or income tax reports, that corroborate the submission that “DJ” cannot afford the rent he has been paying since April 01, 2020. In the absence of such evidence, I find that “DJ” has also submitted insufficient evidence to establish that he needs to move into the rental unit for financial reasons.

The final, critical question that must be considered at these proceedings is whether the Respondents’ submissions that they intend to move into these rental units are believable, given their personal circumstances and the quality of their current accommodations.

As has been previously stated, I find that with some relatively minor renovations 2181 and 2183, when combined, will be somewhat similar to the accommodations “IJ” and “CJ” are currently renting. As they would be moving into accommodations that would be of reasonably similar quality, after minor renovations, I find their submission that they wish to move into these units is credible.

On the basis of the size and quality of the home “VJ” is currently living in, I find it unbelievable that he will be moving into unit 6 with his wife and 3 children, as it is very small. Although I accept that many families live in accommodations as small, or smaller than unit 6, I find it highly unlikely that this would be suitable for “VJ” and his family, given their current lifestyle.

In adjudicating this matter, I find “LH”s testimony that unit 6 is approximately 700 square feet in size is more credible than the Landlord’s submission that it is 930 square feet in size. I favoured “LH”s testimony in this regard because she testified that she has actually measured unit 6, while the Landlord’s measurements are based on measurements of a unit that “CJ” believes is similar in size. I find that a unit of 700 square feet is extremely small for a family of 5 that is used to living in a 3000 square foot home. I find that it is particularly small for a family with children that are 2, 4, and 7 years old.

In adjudicating this matter, I find “LH”s testimony that unit 6 is a one bedroom unit without a den is more reliable than the Landlord’s submission that it is a one bedroom unit with a den. I find that “DJ”s explanation that the large kitchen could be used as a kitchen/living area and the area “LH” describes as a living room could be used as den is somewhat self-serving and misleading, given the size of the unit. More importantly, I find that the advertisement relating to the sale of the residential property describes the 9 suites as “one bedroom units”, which corroborates the testimony of “LH”.

As it is highly unbelievable that “VJ” and his family would move into a one bedroom unit of approximately 700 square feet, in the absence of proof of financial need, I find it likely that the Two Month Notice to End Tenancy for Landlord's Use was served for an ulterior purpose, such as evicting a Tenant who is paying low market rent. I therefore find that the Two Month Notice to End Tenancy for Landlord's Use that was served to “LH” (unit 6) was served in bad faith and that it should be set aside.

On the basis of the undisputed evidence, I find that none of the Respondents have been in unit 6. I find it highly unlikely that “VJ” would opt to move into a rental unit he has never seen. In my view, this supports a finding that the Two Month Notice to End Tenancy for Landlord's Use that was served to “LH” was served in bad faith.

On the basis of the advertisement for the sale of the residential property and the Tenants’ written submission that unit 5 is a one bedroom unit, I find it highly likely that unit 5 is also a one bedroom unit, in spite of the Landlord’s assertion that it is a one bedroom unit with a den. In the absence of evidence to the contrary, I accept the Landlord’s submission that unit 5 is between 900 and 950 square feet in size.

On the basis of the undisputed evidence that “DJ” is living in a two-bedroom rental unit. Although the “DJ” submits that his current home is smaller than unit 5, I find that submission is not supported by the photographs of his current home and the units in the residential complex. I find it highly unbelievable that he will be moving into unit 5 with his wife and 2 children, as it is very small. Although I accept that many families live in accommodations as small, or smaller than unit 5, I find it highly unlikely that this is true of “DJ” and his family, given their current accommodations. I find that a small one bedroom unit is extremely small for a family of 4 that is used to living in a two bedroom unit, even though the two children are in cribs.

As it is highly unbelievable that “DJ” and his family would move into a one bedroom unit, in the absence of proof of financial need, I find it likely that the Two Month Notice to End

Tenancy for Landlord's Use was served for an ulterior purpose, such as evicting a Tenant who is paying low market rent. I therefore find that the Two Month Notice to End Tenancy for Landlord's Use that was served to “DH” (unit 5) was served in bad faith and that it should be set aside.

In adjudicating this matter, I have placed little weight on the Tenants’ submissions that “DJ” and “VJ” are currently living in homes that are of “higher quality” than units 5 and 6. Given the close proximity these units have to each other, I find it entirely possible that a person would choose to live in a unit that is not particularly luxurious in exchange for being close to family members, particularly when those family members provide childcare.

On the basis of the photographs submitted in evidence and “IJ”s testimony, I find that “IJ” and “CJ” currently have boxes of personal items stored in the basement of the residential complex. I find that this supports their submission that they intend to move into 2181/2183.

After considering all of the evidence in its totality, I find there is insufficient evidence to conclude that the Two Month Notices to End Tenancy for Landlord's Use that were served to “LM, and “NS” were served in bad faith. I therefore dismiss the applications to set aside the Two Month Notices to End Tenancy for Landlord's Use that relate to 2181/2183.

In adjudicating this matter, I note that there is no evidence that any of the Respondents have ended a tenancy in another rental property owned by AE or the numbered company that owns this property for the purposes of moving into the property. As there is no history of such behaviour, in spite of the evidence that shows the family is involved in renovating rental properties, I cannot conclude the evidence shows that “IJ” or “CJ”, are acting in bad faith.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Two Month Notice to End Tenancy for Landlord's Use that was served to “NS” has been dismissed and the amended Two Month Notice to

End Tenancy for Landlord's Use complies with section 52 of the *Act,* I grant the Landlord an Order of Possession for 2183, pursuant to section 55(1) of the *Act.*

As the application to set aside the Two Month Notice to End Tenancy for Landlord's Use that was served to “LM” has been dismissed and the amended Two Month Notice to End Tenancy for Landlord's Use complies with section 52 of the *Act,* I grant the Landlord an Order of Possession for 2181, pursuant to section 55(1) of the *Act.*

I find that the Applications for Dispute Resolution filed by “LH” and “DH” have merit and that they are entitled to recover the fee for filing an Application for Dispute Resolution.

I find that “LM” and “NS” have failed to establish the merit of their Applications for Dispute Resolution and I therefore dismiss their application to recover the fee for filing an Application for Dispute Resolution.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use that was served to “LH”, in relation to unit 6, is set aside. That tenancy shall continue until it is ended in accordance with the *Act*.

The Two Month Notice to End Tenancy for Landlord's Use that was served to “DH”, in relation to unit 5, is set aside. That tenancy shall continue until it is ended in accordance with the *Act*.

The Two Month Notice to End Tenancy for Landlord's Use that was served to “NS”, in relation to 2183, is upheld. I grant the Landlord an Order of Possession that requires “NS” to vacate 2183 by 1:00 p.m. on October 31, 2021. This Order may be served on “NS”, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Two Month Notice to End Tenancy for Landlord's Use that was served to “LM”, in relation to 2181, is upheld. I grant the Landlord an Order of Possession that requires “LM” to vacate 2181 by 1:00 p.m. on October 31, 2021. This Order may be served on “LM”, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

“LH” and “DH” have each established a monetary claim, in the amount of $100.00, in compensation for the filing fee paid for an Application for Dispute Resolution. I therefore grant them each a monetary Order for $100.00.

The monetary Order granted to “LH” will name “IJ” and “VJ”, as they are the parties named in her Application for Dispute Resolution. The monetary Order granted to “DH” will name “IJ” and “DJ”, as they are the parties named in her Application for Dispute Resolution.

In the event the Landlord does not comply with the aforementioned monetary Orders, they may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court. In the event either Tenant does not wish to enforce this Order through the Court, the Tenant has the right to withhold $100.00 from any rent due, pursuant to section 72(2) of 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: August 26, 2021

Residential Tenancy Branch