



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 05, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 28, 2021 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing. The Landlord appeared at the hearing with H.S their son and agent (the “Agent”). I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started August 01, 2016 and is a month-to-month tenancy. Rent is \$900.00 per month. The parties agreed rent is due on the first day of each month. The Tenant paid a \$450.00 security deposit.

The Notice was submitted. The grounds for the Notice are as follows:

All of the conditions for the 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.

The Purchaser is a company named on the front page of this decision.

The Agent testified that the Notice was posted to the door of the rental unit June 30, 2021. The Tenant testified that the Notice was received July 05, 2021 posted to the door of the rental unit.

I asked the Agent if the Purchaser is a “family corporation” as this term is defined in the *Residential Tenancy Act* (the “Act”). At first, the Agent testified that it is. When I asked how the Purchaser meets this definition, the Agent testified that the Purchaser is a limited company and that the Agent does not know the business structure of it. The Agent then testified that they do not know if the Purchaser is a “family corporation”.

The Agent further testified as follows. The sale of the rental unit has been completed and all documents have been signed. The Landlord received notice from the Purchaser that they want vacant possession which is why the Landlord served the Notice. The Landlord was told that the Purchaser is purchasing the house to move into it.

The Tenant testified that they do not know if the Purchaser is a “family corporation”. The Tenant further testified as follows. They believe the Purchaser plans to purchase the rental unit and renovate it rather than occupy it. The Tenant heard an appraiser talking about “gutting” the rental unit. The Tenant thought the Notice was not served in time and that the Landlord had to serve a new notice with a correct effective date.

The relevant documentary evidence submitted includes:

- A photo of the Notice posted on the door of the rental unit
- The Notice
- Portions of the Contract of Purchase and Sale
- A Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession
- The tenancy agreement
- Text messages

Analysis

The Notice was issued pursuant to section 49(5) of the *Act* which states:

(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.**

(emphasis added)

The term “family corporation” is defined in section 49(1) of the *Act* 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;

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. I find the Tenant disputed the Notice in time as it was disputed July 05, 2021, within 15 days of June 30, 2021, when the Notice was served, and of July 05, 2021, when the Notice was received.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I am not satisfied based on the evidence provided that the Landlord has proven the grounds for the Notice for two reasons. First, I am not satisfied based on the evidence provided that the Purchaser is a family corporation. Second, I am not satisfied based on the evidence provided that 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.

In relation to the first issue, the Landlord must prove that the Purchaser is a family corporation. The Purchaser being a limited company has no relation to whether it is a family corporation. I find based on their testimony that the Agent does not know if the Purchaser is a family corporation. The Tenant did not know if the Purchaser is a family corporation. Given the testimony of the parties, I have considered what documentary evidence there is before me to show that the Purchaser is a family corporation. The only documentary evidence relevant to this issue is the Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession which states:

The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(s)) intend in good faith to occupy the Property.

I do not find the Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession sufficient to prove that the Purchaser is a family corporation because it is a standard form and the relevant paragraph refers to both purchasers who are individuals and purchasers who are family corporations. I do not find the Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession to be compelling evidence showing that the Purchaser is a family corporation. In the absence of further compelling evidence showing that the Purchaser is a family corporation, I am not satisfied that it is.

In relation to the second issue, the Landlord must prove that 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 Agent took the position that the Purchaser is purchasing the rental unit for someone associated with the company to move into it. The Tenant took the position that the Purchaser intends to renovate the rental unit rather than occupy it. Given the testimony of the parties, I have considered what documentary evidence there is before me to show that 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.

Again, the only documentary evidence to support that 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 is the Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession. I do not find the Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession sufficient to prove that 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 when the Tenant disputes this. Again, the Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession is a standard form and does not give any details about who intends to move into the rental unit. The Agent did not give any details about who intends to move into the rental unit. I did not hear from anyone associated to the Purchaser during the hearing nor do I have any documentation from the Purchaser, other than the Tenant Occupied Property – Buyers Notice To Seller For Vacant Possession. In the absence of further compelling evidence, I am not satisfied 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.

Given the above, I am not satisfied the Landlord had grounds to issue the Notice and I cancel the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Conclusion

The Landlord has failed to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 02, 2021

Residential Tenancy Branch