



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bhatti Global Organization Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, his legal counsel and the landlord's agent.

Neither party raised any issues with the service of evidence with one exception. The landlord provided that they had served the tenant with additional evidence by registered mail on January 24, 2022 (3 days before this hearing). The tenant confirmed that he had not yet received the evidence.

The landlord explained the evidence was only discovered late which resulted in the late service and it consisted of evidence confirming the tenant's ownership of a house in a neighbouring community (206 kilometres away).

In the hearing, I ordered that I would not consider the documentary evidence submitted but that the landlord was free to present oral testimony regarding the tenant's potential ownership of the another property. However, I cautioned the landlord that I was not sure it had any relevance to the proceeding.

After hearing the landlord's oral submissions on the issue and the tenant's response, I find that as the hearing was related to the landlord's intentions of having a family member move into the subject property, the tenant's ownership of any assets has no relevance to the validity of the subject Notice to End Tenancy or the landlord's intentions. As such, I have not considered either the documentary or oral evidence relating to the tenant's ownership of a house in another community.

During the hearing, it was clarified that the actual owner of the property, and by extension, the landlord is the landlord's family corporation and not the landlord's agent. As such, I have amended the tenant's Application for Dispute Resolution to name the corporate landlord and not its agent.

I note that because this is an Application for Dispute Resolution submitted by the tenant seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Act*.

Should the tenant fail to succeed in cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in August 2019 as a month-to-month tenancy for a current monthly rent of \$700.00 due on the 1st of each month with no security deposit paid.

The tenant submitted into evidence two pages of four and the landlord submitted 4 pages of a Two Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on August 31, 2021, with an effective vacancy date of October 31, 2021, citing both that:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child or the parent or child of that individual's spouse) – indicating the close family member as the father or mother of the landlord or landlord's spouse; and
- 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.

The tenant testified that he had received the Two Month Notice to End Tenancy by email and by registered mail but that he only received two pages of the Notice both times. The landlord testified that he had served all four pages using each method of service.

The landlord's agent submitted, in their written submissions and testimony that their family corporation purchased the residential property on August 12, 2021, with the intention of using the property "for their use". The landlord submitted into evidence a

copy of the corporate Notice of Articles outlining that the agent, his spouse and his father are directors of the family corporation.

The landlord testified that they did not request the selling landlord for vacant possession of the rental unit because they had been informed by their realtor that the tenant was a local housing advocate and was difficult to deal with and the realtor did not want to have to deal with the tenant.

The landlord submitted that the purpose for ending the tenancy is that his parents are going to move into the rental unit. He testified that he has three daughters and his parents currently living with them and the intent is to move his parents into the rental unit. As such, their current home is no longer suitable for them all to live in.

He testified that the location of the rental unit is of great importance to his elderly parents as it is downtown and close to amenities they require, such as their doctor's office, pharmacy, grocery stores and other amenities.

The landlord submitted that he is acting with honest intent and he does intend, in good faith to have his parents move into the unit. He states that he does not intend to defraud or deceive the tenant and that he has no ulterior motive in ending the tenancy.

The landlord testified that after the Notice to End Tenancy was issued the tenant demanded \$20,000.00 from the landlord to agree to move out of the rental unit and a threat of consequences if the landlord did not meet his demands. The landlord categorized these demands as extortion.

In support of this position the landlord has submitted copies of text messages he received from the tenant some of which include statements such as:

- "Just got home from my girlfriend's – and saw the Notice on my door now. ...would be open to some kind of arrangement before things get really messy. I train other Advocates in the province on Tenancy Law, and my tenancy work is regularly spoken about on CBC province wide. This was my most recent case – it had 100 000 reads within 9 hours. It was about 2 month Notices." (a link to a news article was provided). "This was against the top Tenancy lawyers in Vancouver. I have also beaten the great Wally Oppal on a landmark Tenancy case....I have the Northernview coming to my office in half an hour and an interview with CBC at noon. We can do this the simple way or the hard way – I'm not messing around. Respectfully."
- "I have to work – so there no other option with the keys. ...I might have a place, that is being renovated – hopefully, by Feb. 1st + plus we still have to figure out the price of the new place. Would you consider free rent for Nov – Jan. for a signed Mutual Agreement to end Tenancy."
- "Both you and your father said you were moving into both the raven place units, under a 2-month notice when you he bought the place. Are you interested in a

settlement agreement there, now, as well? (You are looking at 20 000ish if it goes to the RTB). You might want to tell your lawyer about this further as it relates to my case. ...how about a real discussion – once and for all.Do we fight 3 cases out, now – or do we settle all 3, and I stop digging?

The tenant submitted a number of reasons why he believes the landlord is not acting in good faith in their intentions to have his parents move into the rental unit. The tenant first submits that due to the current vacancy rate in their local community his rent is reasonable, but it could be re-rented at over double the amount of rent his paying.

The tenant also suggested that there is additional space available in the residential property that could be converted from office space into apartments. He submitted that there will be no one else on that same floor as of January and that the space had all previously been apartments.

The tenant testified that the landlord and his parents have moved together twice since July 30, 2018 and that the landlord owns an additional house and a duplex. The tenant also submitted that at one of the properties owned by the landlord (the duplex), the landlord had issued Two Month Notices to End Tenancy for Landlord's Use to both sets of tenants in the duplex.

The tenant submitted an affidavit from the former tenant of one of the units which states that when the landlord issued those notices, they were informed that the landlord would be moving into their rental unit and the landlord's parents would be moving into the other neighbouring unit.

The landlord testified that when the tenant, who wrote the affidavit, moved out of the duplex they had caused such significant damage to the property that it required a substantial amount of work to get to be habitable. The landlord testified that in the end it cost them \$80,000.00 to complete the repairs. I note the landlord's affidavit indicated the cost was \$60,000.00 and that "it was not cost-effective nor feasible to occupy the Raven Property for my use as I would have to suffered further losses." [reproduced as written].

The landlord testified that even though the work was completed by the end of April 2021 it made more sense to the family to stay were there had been living and rent out the newly rented duplex units as it would help them deal with the debt incurred as a result of these repairs. The landlord testified that they sold one of their other properties, in July 2021, to pay for debt. As noted above the landlords took possession of the property that is the subject of this Notice to End Tenancy on August 12, 2021.

The tenant also submitted that he did not believe that the landlord's agent's parents "would want" to move into the rental for a number of reasons, including: that they had sufficient income to live anywhere they chose; the stairs leading to the rental unit would be difficult for seniors to manage; that the areas is downtown and on a major noisy

road; and that, despite the landlord's claim that they did not drive, they had access to a local taxi company that the family owned.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

A two-month notice may be issued if the landlord, who is an individual, seeks 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.

In the alternative, a two-month notice may be issued if the landlord that is a family corporation seeks to end a tenancy in respect of a rental unit 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.

Residential Tenancy Policy Guideline #2A defines "good faith" as meaning 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.

The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

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

I am not persuaded by any of the tenant's submissions regarding whether or not the landlord's parents "wanted" to move into the rental unit or that their income is relevant to where they should live. Landlords have a right, for whatever personal reasons they

have, to decide where they want to live or where they want their close family members to live. It is not my role, or the tenant's, to question why they wish to live in a specific unit.

However, I am also not persuaded by the landlord's evidence and submissions that they intend, in good faith, to have their parents move into the rental unit. I make this determination for the reasons below in this section of this decision.

Primarily, I find the landlord has confirmed that in the past they have issued a similar notice to end tenancy, with the intention of his immediate family moving into one unit and his parents moving into another. I note that that property was a duplex. While the landlord testified that the person who submitted an affidavit about his side of the duplex that was to be used by the landlord and his family had significantly damaged their unit, there was little, if any, evidence that both of the duplex units were damaged so bad that both were rendered uninhabitable.

The landlord's testimony on this point was that this damage was caused deliberately by the tenants in the duplex after the notice was given to them but before the end of the tenancy. While the landlord did provide photographic evidence, they have not provided Condition Inspection Reports of either duplex unit or any indication specifying from which duplex the photographs were taken. The landlord did not provide any testimony that he pursued a claim against either of the other tenants to recover any of the costs associated with any of the repairs.

In regard to the photographic evidence submitted by the landlord, I find, the condition of the duplex unit and/or units is primarily a significant amount of garbage left behind and not a significant amount of actual damage, that would require anything more than aesthetic fixes such as new carpets and painting. For example, in one of the receipts submitted for supplies the landlord purchased a number of door jambs and doors and yet there is not one picture or document that confirms any damage to any of the doors in the duplex.

Some of the other receipts include supplies such as replacing vanities; toilets and tub/shower supplies; vinyl siding and soffits; replacement windows and yet there is no evidence that any of these items had been damaged by the previous tenants. Even if the duplexes had been significantly damaged during the previous tenancies the landlord has provided no evidence that the damage had been caused from the time they issued the Notice to End Tenancy and the end of those tenancies.

There was one estimate submitted for the removal of landscaping and overgrowth on the property and to regrade the property and install ground pipe for rear gutter run off. There is no indication that this work was required to make repairs because of damage done to the property but rather it appears to be an upgrade to the property.

As such, I find it is more likely than not that the landlord was aware of the requirements to complete a significant volume of repairs to the duplexes prior to their purchase of the property. I am not persuaded that the scope of work was unknown to the landlord or that the scope of work was the result of events after the purchase of that property.

In addition, I am not convinced that landlord suffered such a loss on the renovations of that property that would have required them to not move into the duplexes once the renovations were complete. That is to say, the landlord submitted that they could get more rent from the duplexes than if they had moved into them and rented out the house they currently live in and that they had to sell one of their other properties to cover off the debt incurred.

Furthermore, the landlord provided no evidence that he sought a claim against either tenant for either side of the duplex to recuperate any or all of the costs associated with the damaged caused by those tenants.

This testimony is not consistent with the landlord's submissions that they sold this other property in July 2021 to cover off that debt and yet they could turn around and by August 12, 2021 take possession of the property that is the subject of this dispute. Clearly, the landlord's selling another property they owned was contributed to their ability to purchase a new (this) property.

As a result, I find the landlord has already shown a propensity to disregard the provisions of the *Act* that require the landlord to follow through with their intended purpose for ending a tenancy for personal use. I am not convinced that the landlord will not do the same in these circumstances.

In addition, based on the landlord's submission of the reasons why his realtor did not want deal with ending the tenancy before the purchase, as allowed under Section 49, I find it is likely that the landlord, on a balance of probabilities, had an additional ulterior motive.

That is to say, the landlord submitted that their realtor told them that they did not want to deal with the issue of ending the tenancy because the tenant was a local housing advocate who would cause them too much difficulty. While that testimony is unclear, in that it is not the realtor that would have to deal with the Notice to End Tenancy but rather the previous (or selling) landlord who would.

However, I find that is more likely than not that, as result of this position taken by the landlord's realtor and/or this information provided to the landlord by the realtor, the landlord has been influenced to want to end this particular tenancy.

I am not persuaded that the tenant was "extorting" anything from the landlord as suggested by the landlord. In reviewing the text messages, submitted by the landlord, I find that in one of them the tenant was trying to negotiate a mutual end to the tenancy

with compensation in the amount of \$2,100.00 (three month's rent). There is nothing in doing so that would suggest extortion.

In relation to the claim that the tenant was trying to get \$20,000.00 from the landlord, I find that the tenant was simply informing the landlord about issues that could go to dispute resolution at the Residential Tenancy Branch, regarding the two other tenancies in the duplexes where the landlord had issued a similar notice to end tenancy.

Even if I had not found, above, that the landlord does not intend, in good faith, to have his parents move into the rental unit, I must consider the form and content of the Notice itself.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

While the approved form for a two-month notice is a four-page document, the tenant alleges he only received the first two of the four pages. I note the last two pages of a two-month Notice include important information to both the tenant and the landlord. This information, relevant to a tenant, includes advising the tenant of the requirement of good faith, the effective date of the notice; compensation related to the notice; the ability to move out early; and when the notice is considered to be received by the tenant.

Normally, I would consider the failure to provide all four pages to a tenant a fatal flaw in the service of a Notice to End Tenancy, but in light of the tenant's work and his assertions made to the landlord in the text messages submitted by the landlord, I am satisfied that this particular tenant was aware of his rights and suffered no prejudice, even if he only received the first two pages.

As such, I make no specific finding on whether or not the landlord served two or all four pages of the Notice to End Tenancy.

However, as the landlord has checked off two reasons for ending the tenancy – one which implies that the landlord is a family corporation and one that implies that the landlord is not a family corporation, I find this to be a fatal flaw in the subject Notice. A landlord cannot be both a family corporation and an individual landlord at the same time.

Conclusion

For the reasons noted above, I order that the Two-Month Notice to End Tenancy for Landlord's Use of Property issued on August 31, 2021 is cancelled and is of no force or effect. I order the tenancy will continue until ended in accordance with the *Act*.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the filing fee paid by the tenant for this application.

I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a).

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: February 4, 2022

Residential Tenancy Branch