



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC 1328526 Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, CNL, RP, OLC, CNR

Introduction

This hearing dealt with the tenant's first application (the "First Application") pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The First Application was filed on November 26, 2021. This hearing also dealt with the tenant's second application (the "Second Application") pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46.

The tenant, DM, and IW attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Preliminary Issue- Naming of Parties

The tenant named IW as the landlord on both applications for dispute resolution. IW testified that her numbered company owned the subject rental property and that she sold the numbered company, which included the subject rental property, to DM at the end of November 2021. IW and DM testified that DM took possession of the subject rental property on December 1, 2021 and was entitled to collect rent from December 1, 2021 forward. DM testified that the numbered company is the owner and landlord of the subject rental property, and he is the numbered company's agent.

DM entered into evidence a Contract for Purchase and Sale of the subject rental property dated November 29, 2021 which states at section 3 TERMS AND CONDITIONS:

The purchase and sale of the Property includes the following terms:

As Is, As Viewed November 1, 2021

The Property Above [the subject rental property] is owned by [the landlord numbered company] ([IW]) And it is the intent of the Seller + Purchaser to sell the shares in the above co. to [MD]...

The above contract is signed by IW and MD.

DM entered into evidence a letter from his lawyer to himself dated March 9, 2022 which states:

This is to confirm that you have entered into an unconditional contract of purchase and sale with respect to the [subject rental property] (the "Property"). I further confirm that the said purchase will take place by way of a transfer to you of all of the shares of the company which is currently the registered owner of the Property.

Although there has been a delay in the completion of this transaction, the delay has been outside of the control of both of you and the vendor of the Property and, accordingly both parties are required to abide by the terms of the contract of purchase and sale and proceed toward completion of the sale as soon as that can happen.

Finally, I confirm that because of the aforementioned delay being beyond the control of both parties, the vendor has granted you possession of the Property with permission to proceed with remediation work to bring the Property into a state of good repair and condition suitable for a resort property.

The tenant testified that she was aware that the property was being sold at the end of November 2021; however, she did not know when the property was being sold or who the property was being sold to. The tenant entered into evidence a BC Company Search for the numbered company dated January 4, 2022, which states that IW is the director of the numbered company which was incorporated on October 15, 2021. The tenant testified that the sale has still not closed, and it is not clear who the landlord is.

Both parties agree that the tenant has paid rent to DM from January 2022 to the present date.

Section 1 of the *Act*, defines landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Based on the testimony of DM and IW, the Contract for Purchase and Sale and the March 9, 2022 letter from DM's lawyer, I find that for all material times, the numbered

company owned the subject rental property and thus was a landlord as defined under section 1(a) of the *Act*. I accept DM and IW's testimony that DM has entered into an agreement for purchase of the numbered company which owns the subject rental property, and that DM was granted possession on December 1, 2021. I find that pursuant to the agreement made between DM and IW, DM became as agent of the landlord numbered company on December 1, 2021, when possession was granted to him.

IW and DM requested the tenants' First Application be amended to name the landlord numbered company, rather than IW. DM testified that the landlord stated on the Two Month Notice being contested in today's hearing is the numbered company. Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to name the numbered company as the landlord because the numbered company meets the definition of landlord set out in section 1(a) of the tenancy agreement.

Preliminary Issue- Service

The tenant testified that she served IW with a copy of her First Application via email on or around December 7, 2021. No proof of service documents were entered into evidence and no written service agreement for service via email was entered into evidence. IW testified that she received the above package around that time and sent a copy to DM. DM testified to same. I find that the landlord was sufficiently served for the purposes of this *Act*, with the tenant's First Application, in accordance with section 71 of the *Act* because both IW and DM confirmed receipt.

The tenant testified that she served DM with a copy of her Second Application via email on December 9, 2021. No proof of service documents such as the serving email were entered into evidence. No written service agreement for service via email was entered into evidence. DM testified that he did not receive a copy of the tenant's Second Application.

Rule 3.5 of the Residential Tenancy Branch Policy Guideline states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

I find that the tenant has failed to prove, on a balance of probabilities, that the landlord or an agent of the landlord was served with a copy of the tenant's Second Application as no proof of service documents were provided and DM testified that the Second Application was not received. Pursuant to the above, I dismiss the tenant's Second Application with leave to reapply.

DM testified that he served the landlord's evidence on the tenant via email on March 8, 2022 and March 16, 2022. The serving emails were entered into evidence. The tenant testified that she received both emails on or around their date of service; however, the pdfs attached in the March 16, 2022 email were difficult to read because she had to access them on her phone, and the writing was small. Throughout the hearing the tenant referred to evidence contained in the March 16, 2022 email. I find, on a balance of probabilities, the tenant was able to view the landlord's evidence because she was able to refer to its contents during the hearing. I find that both evidence packages were sufficiently served on the tenant, for the purposes of this *Act*, pursuant to section 71 of the *Act* because the tenant confirmed receipt and spoke to the evidence contained in both packages.

The tenant testified that she served DM her evidence via email. DM testified that he received a few scattered screen shots from the tenant via email. I find that the tenant's evidence was sufficiently served, for the purposes of this *Act*, on the landlord, in accordance with section 71 of the *Act* as the landlord confirmed receipt.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice to End Tenancy for Cause (the "Two Month Notice") and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Two Month Notice.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Two Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Two Month Notice and recovery of the filing fee for this application.

Issue to be Decided

Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2021 and is currently ongoing. Monthly rent in the amount of \$1,800.00 is payable on the first day of each month.

DM testified that on or around December 7, 2021, at his direction, the Two Month Notice was posted on the tenant's door. The tenant testified that she received the Two Month Notice, which was posted to her door, on November 26, 2021. The tenant filed to dispute the Two Month Notice on November 26, 2021. The Two Month Notice, dated November 24, 2021 was entered into evidence and states the following reason for ending this tenancy:

- 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).

The landlord listed on the Two Month Notice is the numbered company. DM testified that he served the tenant with the Two Month Notice because he plans on living in the subject rental property.

Analysis

I find, on a balance of probabilities, that DM had the the Two Month Notice posted on the tenant's door on November 26, 2021 and not on December 7, 2021 because the tenant filed to dispute the Two Month Notice on November 26, 2021. I find that the posting was in accordance with section 88 of the *Act*.

As stated earlier in this decision, DM became the agent of the numbered company on December 1, 2021 when he took possession of the subject rental property. I find that on November 26, 2021, DM was not an agent of the landlord and had not yet entered into the agreement for purchase and sale of the subject rental property through the numbered company. Therefore, on November 26, 2021, DM did not have authority to serve the tenant with the Two Month Notice. I therefore find that the Two Month Notice is cancelled and of no force or effect.

Section 49(3) and section 49(4) of the *Act* state:

(3)A landlord who is an individual may 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.

(4)A landlord that is a family corporation may 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.

I also note that the reason for ending the tenancy stated on the Two Month Notice was that the landlord or the landlord's close family member intended on moving in. The landlord is a numbered company, not an individual, so the option to end the tenancy under section 49(3) of the *Act* was not an available option to end the tenancy.

If the numbered company is a family corporation as defined by the *Act*, the landlord may end the tenancy under section 49(4) of the *Act* 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; however, this reason for ending the tenancy was not selected on the Two Month Notice. Since the reason for ending the tenancy selected on the Two Month Notice was not available to the landlord, the Two Month Notice is of no force or effect.

Conclusion

The tenant's Second Application is dismissed with leave to reapply.

The Two Month Notice is cancelled and of no force or effect.

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

Dated: March 28, 2022

Residential Tenancy Branch