



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1250231 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, CNL, OLC**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee from the other party pursuant to section 72;
- An order to cancel a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 55; and
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62.

The landlord was represented at the hearing by a shareholder/director, DW ("landlord"). The tenant was represented at the hearing by his sister acting as his advocate, JW. As both parties were sufficiently represented, service of documents was confirmed. The landlord acknowledged being served with the tenant's Notice of Dispute Resolution Proceedings and the tenant's advocate acknowledged service of the landlord's evidence. Both parties stated they had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to satisfy me that 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?

Can the tenant recover the filing fee?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord started by calling a witness, KG, the building manager who witnessed the landlord personally serve the tenant with the 2 Month Notice to End Tenancy for Landlord's Use on December 28, 2021. The tenant's advocate acknowledges it was served to the tenant on that date.

The copy of the notice to end tenancy provided as evidence states that the reason for ending the tenancy is because:

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 witness testified that the landlord told him the previous owner was going to move her son (the tenant) out of the building once it was sold. The witness acknowledged that the landlord tried to call the previous owner of the building, the tenant's mother, after serving the notice to end tenancy upon the tenant. The witness further testified that when walking through the building with the realtor, the realtor said the tenant's unit would be vacated after the sale of the building. The witness does not recall the name of the realtor that represented the former owner of the building (the tenant's mother), having only met him twice. The witness confirmed that the only knowledge he had that the tenant would vacate came from either the landlord's realtor, the tenant's mother's realtor or the purchasing landlord, himself.

The landlord testified that the unit in question is a ground floor bachelor unit in a building his company owns. The building has 11 units in it. The landlord served the tenant with the 2 Month Notice to End Tenancy for Landlord's Use with a bona fide intention of

placing his son in it. His son is returning to Canada from elsewhere next month and needs a place to reside. He testified that his son prefers the ground level bachelor unit occupied by the tenant and that is why it was chosen over any of the other 11 units.

The landlord testified that he had a dozen calls with the tenant's mother about possibly relocating the tenant after he takes over possession of the building. At the time, the landlord's mother went into the hospital and became unable to move her son, the tenant, out. The landlord tried to cooperate with the tenant's family and not push the tenant onto the sidewalk and points to call logs to substantiate his version of events. The landlord is aware that the tenant suffers from a mental health issue.

The landlord denies the argument that the family was unaware he intends for his son to move into the rental unit. The landlord testified that the realtor selling the building told him that the tenant would move out after the building was sold. The landlord's realtor made representations to him that it would happen, and the landlord relied upon that. The landlord argues that when the tenant's stepfather and mother are no longer caretakers to the building, their son, the tenant, no longer has daily visits from them.

On cross exam, the landlord testified that the building is owned by a numbered company. The landlord testified that there are 2 shareholders of the company and that he is a major shareholder. The landlord did not identify who the other shareholder was and no documentary evidence regarding the corporate structure of the numbered company was provided by the landlord.

The tenant's advocate provided the following testimony. She is the sister of the tenant and the daughter of the previous owner of the building. She has a background in real estate, and she was involved in the sale of the building and read the contract of purchase and sale. There was no indication from the purchaser of the building, the landlord in this dispute, that her brother's tenancy would be jeopardized by the selling of the building. If that issue had been raised, her mother would not have sold the building. There is no clause in the purchase and sale agreement that mentions her brother's unit must be vacated for the landlord's son to occupy. Her brother has mental health issues and has lived quietly and peacefully in the building for more than 20 years. The tenant's advocate argues that the rent her brother pays for the rental unit is very low compared to comparable units in the building and stated her family is willing to pay an increased rent to allow her brother to continue living in the unit. The advocate testified that she called the landlord to negotiate this, but the landlord became irate and ended the conversation.

The tenant's advocate refutes the landlord's document, a letter from his realtor that implies they could assume the tenancy with the seller's son would be vacated based on initial discussions/contract negotiations. The seller never spoke directly with the purchaser's agents and no such agreements to vacate the unit was made by the tenant's mother. Neither the landlord nor the tenant's advocate called the realtor who represented the tenant's mother (the seller) as a witness to provide testimony.

Analysis

I find the tenant was served with the 2 Month Notice to End Tenancy for Landlord's Use on December 28, 2021 and filed an application to dispute it on January 7, 2022, within the 15 days as required under section 49 of the Act.

Ending a tenancy for occupancy by a landlord, purchaser or close family member is governed by section 49 of the Residential Tenancy Act and the Residential Tenancy Branch produced Policy Guideline PG-2A to assist parties to understand the issues likely to be relevant in disputes around this issue.

A. LEGISLATIVE FRAMEWORK

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord:

- 1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit;*
- 2. 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;*
- 3. enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit.*

"Landlord" means an individual or family corporation who at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.

"Close family member" means the landlord's parent, spouse or child, or the parent or child of the landlord's spouse. A landlord cannot end a tenancy under section 49 so their brother, sister, aunt, niece, or other relative can move into the rental unit.

"Family corporation" means 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.

"Purchaser" means a person that has agreed to purchase at least 1/2 of the full

reversionary interest in the rental unit.

B. GOOD FAITH

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 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.

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.

At the commencement of the hearing, I advised the parties that pursuant to rule 6.6 of the Residential Tenancy Branch Rules of Procedure, the landlord bears the onus to prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this case, the landlord seeks to end a tenancy using the provisions of section 49(4) whereby his company is a family corporation who seeks to have a close family member of person owning voting shares of the corporation occupy it. Section 49 is clear that a “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. For the purposes of section 49(4), a family corporation must have a reversionary interest in the rental unit exceeding 3 years and holds not less than $\frac{1}{2}$ of the full reversionary interest.

To start, the landlord did not provide any documentary proof to corroborate his assertion that the company is a family corporation. Such proof would include either a company search or a corporate or company summary report indicating who the shareholders are. This could be followed by testimony regarding the familial links between the shareholders. Further, when the tenant asked the landlord how many shareholders the company has, the landlord was reluctant to provide this information. The landlord stated that there are 2 shareholders and that he is the majority shareholder however he specifically stated he did not wish to identify who the other shareholder was.

Since the landlord did not identify who the other shareholder is, I am left not knowing whether the other shareholder has a close familial relationship with the landlord in this proceeding, the shareholder who states his son wants to move into the rental unit. Moreover, the landlord gave no testimony or documentary evidence regarding the reversionary interest of the family corporation in the rental unit. As such, I find insufficient evidence was provided by the landlord to satisfy me that the corporate landlord meets the definition of a "family corporation" under section 49.

Secondly, the landlord did not provide any evidence, other than his own testimony, that his son intended, in good faith, to occupy the rental unit. No affidavit or written statement from the son was provided, and the landlord did not call his son as a witness to provide testimony. The landlord stated his son was returning to Canada, but the landlord gave little information regarding whether the son was ending a tenancy as a tenant, or selling his own property and moving. If the tenant's son were moving within the next month, as the landlord argues, I would expect the landlord to have in his possession documents such as travel itineraries and moving contracts to substantiate this statement. While the landlord's testimony bears weight, testimony from the son to corroborate the landlord's story would have strengthened the landlord's argument. Likewise, the testimony from the landlord's witness, the building manager, I give little weight to, as his testimony regarding the eventual use of the rental unit came mostly from what he was told by the landlord or the landlord's realtor.

Third, the landlord has relied upon what I determine are vague and unsubstantiated assurances made to him that the tenant would vacate the unit after it was sold to his company. The landlord did not call the previous owner's realtor who assured him that

the tenant would vacate the unit after the building was sold. Nor did the landlord provide any written correspondences from the seller's realtor that corroborates the landlord's version of what happened. I would reasonably expect that the name of the seller's realtor would be readily available on the contract of purchase and sale. I find the lack of testimony from this person favours the tenant's position that no such assurances were given that the tenant would vacate the rental unit.

The landlord was clear in his testimony that his son's eventual occupation of the ground floor bachelor unit, the tenant's unit, was part of the reason for purchasing the building. If that was the intent, the landlord ought to have provided the seller with a request, in writing, to give the tenant notice that a close family member of the person owning voting shares in the family corporation intends in good faith to occupy the unit, as contemplated in section 49(5)(c). Instead, the landlord purchased the building with no caveats or addendums seeking to end the tenancy with one of the building's tenants, the seller's son, after purchase. In purchasing the building, then seeking to end the tenancy after purchase, the landlord appears to be less than forthright in his dealings with the tenant's mother, the seller. It is more likely than not, as the tenant's advocate claims, that the tenant's mother would not have sold the building to the new landlord if she understood that her mentally challenged son would be evicted from the building immediately after selling it. I find the tenant's version of events to be the more likely to be believed.

I cancel the landlord's notice to end tenancy on the following grounds:

I have insufficient evidence that the entity seeking to end the tenancy is a family corporation as defined by section 49 of the *Act*.

I find the landlord has provided insufficient evidence to satisfy me that a close family member of a shareholder of a family corporation with a reversionary interest in the rental unit exceeding 3 years intends, in good faith, to occupy the rental unit.

The tenant's application seeks an order that the landlord comply with the *Act*. The application did not specify what section of the *Act* the landlord was not complying with and the tenant's advocate provided no testimony regarding this portion of the application. As such, this portion of the tenant's application is dismissed without leave to reapply.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72 of the *Act*, the tenant may reduce a single payment of rent owing to the landlord by \$100.00.

Conclusion

The notice to end tenancy is cancelled. The tenancy shall continue until it is ended in accordance with 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: March 31, 2022

Residential Tenancy Branch