



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEORGE KANG & SON LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use dated April 1, 2022 (the "Two Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

One of the Tenants, DM, and the Landlord's agent JD attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Tenants were represented by an advocate, DV. During the hearing, the Landlord called MK to testify as a witness.

The parties were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

The parties did not raise issues with respect to service of documents for dispute resolution. JD acknowledged the Landlord's receipt of the Tenants' notice of dispute resolution proceedings package and documentary evidence. The Landlord did not submit documentary evidence for this application and relied on oral testimony.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Two Month Notice?
2. Are the Tenants entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced with a previous landlord on December 1, 2003 and is month-to-month. Rent is currently \$898.00 due on the first day of each month. A copy of the tenancy agreement has been submitted into evidence.

JD testified that the rental property was previously managed by the Landlord's owners, MK and her husband GK, as well as a building manager PL.

JD testified that GK passed away and the Landlord issued the Two Month Notice for MK to move into the rental unit.

A copy of the Two Month Notice has been submitted into evidence. The Two Month Notice is signed by MK on behalf of the Landlord and has an effective date of June 2, 2022. The stated reason for the Two Month Notice is 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)". The Tenants' application indicates that they received the Two Month Notice on April 3, 2022.

JD acknowledged that MK owns other properties, including a house that is rented to a family and a house that MK's parents reside in. JD testified that MK is currently living in the living room of the house that her parents live in and is waiting to move into the rental unit. JD testified there is a new building manager onsite who requires assistance from MK.

JD testified that MK is looking to move into the rental unit in good faith. JD testified the rental unit is a corner unit at the top of the rental property and has a patio for MK. JD stated that the rental unit is the unit MK wants to reside in.

JD stated that the Landlord is owned by MK and her father-in-law. JD stated that they have been trying to add MK's son as a shareholder since GK passed away.

MK was called to give testimony. MK confirmed that after GK passed away, they sold the house they used to live in. MK testified that the rental unit is a corner suite on the third floor with less disturbance from other tenants and has a water view. MK confirmed that one of the houses she owns is rented and that her parents live in the other house. MK stated that she needs to help the new building manager.

MK confirmed that she and GK were the shareholders of the Landlord. MK testified that according to GK's will, MK will be the sole shareholder of the Landlord.

In response, the Tenants' advocate submitted that there have been multiple eviction notices from the Landlord and the Tenants are tired about the "annual fight" for their home. The Tenants submitted copies of decisions from 2020 and 2021 in which DM successfully disputed a two month notice to end tenancy for landlord's use and cancelled a one month notice to end tenancy for cause with the Landlord's consent. The file numbers for these decisions are referenced on the cover page of this decision.

The Tenants' evidence indicates that DM was a former employee of the Landlord in the role of building manager for the rental property. The Tenants' advocate submitted that DM had won a determination against the Landlord at the Employment Standards Branch ("ESB"). The Tenants' evidence includes a copy of an ESB determination dated September 24, 2019, which held that the Landlord owed DM \$13,276.26 in wages, vacation pay, compensation for length of service, accrued interest, and administrative penalties.

The Tenants' advocate submitted that the Tenants take impeccable care of the rental unit and assist with taking care of the building. The Tenants' advocate referred to an undated letter from PL describing an incident in which DM assisted with arranging and facilitating the building's boiler room inspection by a heating/plumbing contractor.

The Tenants' advocate submitted that the Landlord has a history of evicting tenants and re-renting at a higher rate. The Tenants' advocate referred to signed letters from PH and JW, who are former tenants of two other units in the rental property. PH's letter, dated April 8, 2022, describes PH's former unit being extensively renovated following the Landlord's issuance of a two month notice to end tenancy for landlord's use dated August 31, 2020. JW's letter, dated April 9, 2022, describes a similar situation following the Landlord's issuance of a two month notice to end tenancy for landlord's use dated December 12, 2021.

DM testified that the two units were “illegal” suites with no stove or oven. DM confirmed PH had applied for compensation against the Landlord but lost on a technicality because the unit was being used for storage. DM testified the Landlord never used the reclaimed units for its own storage as originally stated, but immediately started renovating and eventually re-rented both units.

DM testified that the Landlord and its owners have a “personal vendetta” against her. DM testified that she does not believe the Landlord is acting in good faith. DM testified that MK has never been inside the rental unit. DM testified that the Landlord is in the business of flipping houses and that MK has places to live. DM testified that the Landlord did not act in good faith towards her and the other tenants. DM testified that she works from home and can see and hear the ongoing renovations at the property.

DM testified that as of last year, the Landlord’s shareholders were GK and MK.

DM testified that JW’s suite became available after February 28, 2022 due to the two month notice issued by the Landlord on December 31, 2021. DW questioned why MK did not move into this unit as it is a much nicer 2-bedroom unit. DM testified that PL is moving out of his unit which can be occupied by MK.

JD testified that PL’s unit on the ground floor is being rented out because it is more accessible, and MK wants to move into the rental unit because there would be no tenants above her. JD stated that MK needs a 1-bedroom unit, not a 2-bedroom one.

Analysis

Section 49(7) of the Act requires a two month notice to end tenancy given by a landlord to comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant’s notice*], state the grounds for ending the tenancy,

- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

I have reviewed a copy of the Two Month Notice and find that it complies with the requirements of section 52 of the Act.

I note the Two Month Notice indicates that the landlord or the landlord's spouse would be moving into the rental unit, although the Landlord is George Kang & Son Ltd., not MK. I find that this discrepancy does not invalidate the Two Month Notice in this case. I find this issue was not raised by the parties as it was clear to them that the Two Month Notice is referring to MK. I note the circumstances are unusual in that DM was a former employee of the Landlord and would have more knowledge about the Landlord's owners and operations than a typical tenant would. I find it would be reasonable in the circumstances to amend the Two Month Notice under section 68 of the Act, to state that the Landlord is a family corporation and a person owing voting shares in the corporation intends to occupy the rental unit.

Under Section 49(2)(a) of the Act, the effective date of a two month notice to end tenancy 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.

In this case, the effective date of the Two Month Notice does not comply with the requirements of section 49(2)(a). Section 53 of the Act allows for incorrect effective dates to be automatically changed. Pursuant to subsections 53(2) and 53(3) of the Act, I find that the effective date of the Two Month Notice is deemed to be June 30, 2022.

Pursuant to section 49(4) of the Act, 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.

Section 49(1) of the Act defines a landlord as an individual 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.

Section 49(1) defines a "family corporation" as 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. An individual's spouse qualifies as a close family member under section 49(1) of the Act.

In this case, the Landlord has not submitted any documents to confirm the identity of its shareholder(s). However, I accept MK's testimony that the shareholders were previously GK and MK, and that MK will become the sole shareholder following a transfer from GK's estate. Therefore, I find the Landlord to be a "family corporation" under section 49(1) of the Act.

Based on the Tenants' evidence, I find the Tenants were served with the Two Month Notice on April 3, 2022, in accordance with section 88(a) of the Act.

Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy for landlord's use with 15 days of receiving such notice. Therefore, the Tenant had until April 18, 2022 to dispute the Two Month Notice. Records indicate that the Tenants submitted this application on April 3, 2022. I find the Tenants made this application within the 15-day dispute period required by section 49(8)(a) of the Act.

When a tenant makes an application to dispute a two month notice to end tenancy, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the notice and to demonstrate good faith in issuing the notice.

Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states:

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.
(emphasis added)

Policy Guideline 2A further states:

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.

In this case, I find the Landlord has not met the burden of establishing good faith with no dishonest or ulterior motive for ending the tenancy.

I find there is evidence of significant disagreement between the parties, including the parties' two previous dispute resolution hearings and the parties' ESB proceeding which resulted in a payment order against the Landlord. I accept the Tenants' argument that the Landlord's owner(s), including MK, have a motive for retaliating against the Tenants based on these disputes in which the Landlord has been generally unsuccessful.

I also find that there is a pattern of the Landlord not acting in good faith, as with the two month notice issued to DM in 2020 and in the cases of former tenants PH and JW. I accept the Tenants' evidence that the Landlord renovated and re-rented PH and JW's units after they vacated their units, despite having issued notices stating to end the tenancies for landlord's use. I find that this type of conduct is not in good faith, even though PH was unsuccessful in claiming compensation under the Act. I note that JW's case is fairly recent as the tenancy ended in February of this year.

I accept the Tenants' evidence that other units at the rental property have become available this year and that MK herself owns two properties, one of which is stated to be a 3-bedroom house and the other a 5-bedroom house.

Overall, I do not find MK's reasons for moving into the rental unit to be sufficiently compelling in light of the parties' dispute history, the Landlord's previous (including recent) conduct following the issuance of other notices to end tenancy for landlord's use, and the other housing options that are potentially available to MK.

Based on the evidence before me, I am unable to conclude that the choice for MK to move into the rental unit was made in good faith without any dishonest motive or ulterior purpose. I am unable to conclude that the rental unit was chosen solely for valid reasons unrelated to the Tenants. I emphasize that as held by the BC Supreme Court, good faith requires an honest intention "with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy". I find that the Landlord has not provided sufficient evidence to dispel the notions of dishonest motive or ulterior purpose raised by the Tenants on a balance of probabilities. I therefore find that the Landlord has not met its onus of proving good faith for issuing the Two Month Notice.

Accordingly, I order that the Two Month Notice be cancelled and of no force or effect.

As the Tenants have been successful in cancelling the Two Month Notice, I find that the Landlord is not entitled to an Order of Possession under section 55(1) of the Act.

2. Are the Tenants entitled to recover the filing fee?

The Tenants have been successful on this application. I award the Tenants reimbursement of their filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct \$100.00 from rent payable to the Landlord for the month of September 2022.

Conclusion

The Two Month Notice dated April 1, 2022 is cancelled and of no force or effect.

The Tenants are authorized to deduct \$100.00, on account of the filing fee awarded for this application, from rent payable to the Landlord for the month of September 2022.

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 21, 2022

Residential Tenancy Branch