



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNCOAST INVESTMENTS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing was convened as an in-person hearing at the RTB Office in response to an Application for Dispute Resolution filed by the Tenants April 01, 2022 (the “Application”). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 30, 2022 (the “Notice”).

This matter came before me July 22, 2022, and an Interim Decision was issued July 25, 2022. This Decision should be read with the Interim Decision.

The Tenants appeared at the hearing with K.C., their advocate. The Tenants required sign language interpreters and L.K. and A.P. attended the hearing for this purpose. P.B. appeared at the hearing for the Landlord.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenants submitted the Notice as evidence. The Landlord submitted evidence. I confirmed service of the hearing package and Landlord's evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. 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?

Background and Evidence

The Tenants testified that the tenancy started around 1999 and is a month-to-month tenancy. The parties agreed rent is \$700.00 per month. The parties agreed the Tenants pay rent by the third week of each month. The parties agreed no security deposit was paid or is held. The parties agreed the Landlord purchased the rental unit and property March 30, 2022, and became the landlord.

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

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 parties agreed the Notice was served, and received by the Tenants, March 30, 2022.

P.B. testified that the Landlord owns the rental unit which is a basement suite of a house on a property with two other houses. P.B. testified that the Landlord is owned by P.B.'s brother and their first cousin being their father's brother's son. P.B. testified that eventually, P.B., their father, brother, cousin and other family members intend to use the house, including the basement suite, as living space when they are in the area dealing with their business.

P.B. testified that extensive renovations were going to be done to the house, including the basement suite, prior to anybody using it as living space. P.B. testified that the house is basically stripped down to its studs, or will need to be stripped down to its studs, and that renovations will likely take at least four months. P.B. testified that the plan is to combine the basement suite and upper level of the house to create one residence. P.B. said they plan to "demo" the basement suite and open it up to the rest of the house. P.B. testified that the house currently has open plumbing and open

electrical and is not livable. P.B. testified that nobody has seen the basement suite of the house yet; however, they intend to “gut the basement suite” to do electrical and plumbing work throughout the house. P.B. acknowledged permits will be required for the proposed work to the house and basement suite. P.B. testified that nobody plans to stay in the house or basement suite during renovations because they will be unlivable.

The Landlord submitted photos showing the state of the upstairs of the house.

K.C. advised that they have not received anything showing the Landlord is a family corporation. K.C. questioned P.B. about another house on the property and raised the issue of whether the Notice was issued in good faith. K.C. asked P.B. questions, and made submissions, about it being difficult to find rentals in the area of the rental unit. K.C. questioned P.B. about a letter P.B. submitted stating they live primarily in a different city from the area of the rental unit. K.C. pointed out the issue with the definition of “family corporation” in the Residential Tenancy Act (the “Act”). K.C. submitted that the Notice was not issued in good faith and that P.B.’s family does not intend to live in the rental unit. K.C. submitted that they believe the rental unit will be integrated into the larger business holdings of the Landlord. I understood K.C. to suggest that the rental unit will be used to house employees of the Landlord. K.C. noted that the intention is not to have one person reside in the rental unit full time. K.C. submitted that the renovations planned for the house and rental unit mean the wrong notice to end tenancy has been issued.

Analysis

The Notice was issued pursuant to section 49(4) of the Act which states:

(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.

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;

The term "close family member" is defined in section 49(1) of the Act as follows:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

Pursuant to section 49(8)(a) of the Act, the Tenants had 15 days to dispute the Notice. I find the Tenants received the Notice March 30, 2022, and disputed it April 01, 2022, within time.

The Landlord has the onus to prove the validity of 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 are as claimed.

To issue a notice to end tenancy pursuant to section 49(4) of the Act, the Landlord must be a "family corporation" as this term is defined in the Act. P.B. testified that the Landlord is owned by their brother and first cousin, being their father's brother's son. Given this, the Landlord does not meet the definition of a "family corporation" set out in the Act. During the hearing, P.B. attempted to generalize the definition of "family corporation" to encompass the Landlord because P.B. and their brother are close with their cousin and are family. However, the term "family corporation" is a defined legal term and is very specific. The Landlord being owned by family in general, or people who are like family, is not sufficient. The owners of the Landlord must have one of the specific familial relationships set out in the Act. Here, the owners of the Landlord do not have one of the specific familial relationships set out in the Act and therefore are not a "family corporation" as defined in the Act. The Landlord was not permitted to issue the Notice pursuant to section 49(4) of the Act given they are not a family corporation. The Notice is therefore cancelled.

I also note that P.B. repeatedly emphasized the extensive renovations that are required in relation to the house and rental unit. P.B. estimated that the renovations will take at least four months. P.B. acknowledged nobody would be staying in the rental unit during renovations because it will be unlivable. When issuing a notice to end tenancy pursuant

to section 49(4) of the Act, the person intending to use the rental unit as living space must do so within a reasonable period of the effective date and for at least six months. A landlord cannot end a tenancy pursuant to section 49(4) and then do extensive renovations in the rental unit for four months without living in it. Here, even if the Landlord was a “family corporation” as that term is defined in the Act, I would have cancelled the Notice because it is clear the Landlord intends to do extensive renovations to the rental unit over a period of around four months and not to live in the rental unit within a reasonable period after the effective date of the Notice.

I note that P.B. acknowledged during the hearing that they had not read the relevant sections of the Act in relation to the definition of “family corporation” and “close family member”. Further, it was clear P.B. did not know or understand that the Landlord cannot issue a notice to end tenancy pursuant to section 49(4) of the Act and then renovate the rental unit for approximately four months before anybody uses it for living space. This whole process could have been avoided had the Landlord known and understood their rights and obligations under the Act. I caution the Landlord about issuing further notices to end tenancy without knowing or understanding their rights and obligations under the Act.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise 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 Act.

Dated: October 04, 2022

Residential Tenancy Branch