



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: CNL FFT

Introduction

The tenant disputes a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") pursuant to sections 49(4) and 49(8)(a) of the *Residential Tenancy Act* (the "Act"). The tenant also seeks to recover the cost of the filing fee under section 72 of the Act. It is noted that the abbreviation "Ltd." was added to the landlord's name in the style of cause in order to accurately reflect the name of the corporate entity.

A dispute resolution hearing was convened by teleconference on October 27, 2022. In attendance were the tenant and three representatives of the corporate landlord. Three of the persons present who testified were affirmed and there were no issues of service.

Preliminary Issue: Is the Landlord a Family Corporation?

Ordinarily, a lengthy recitation of the facts and background in such a dispute would be the norm. However, what the tenant referred to as a "technical matter" is, I find, an important preliminary issue that must be resolved: is the landlord which issued the Notice a "family corporation" for the purposes of the Act?

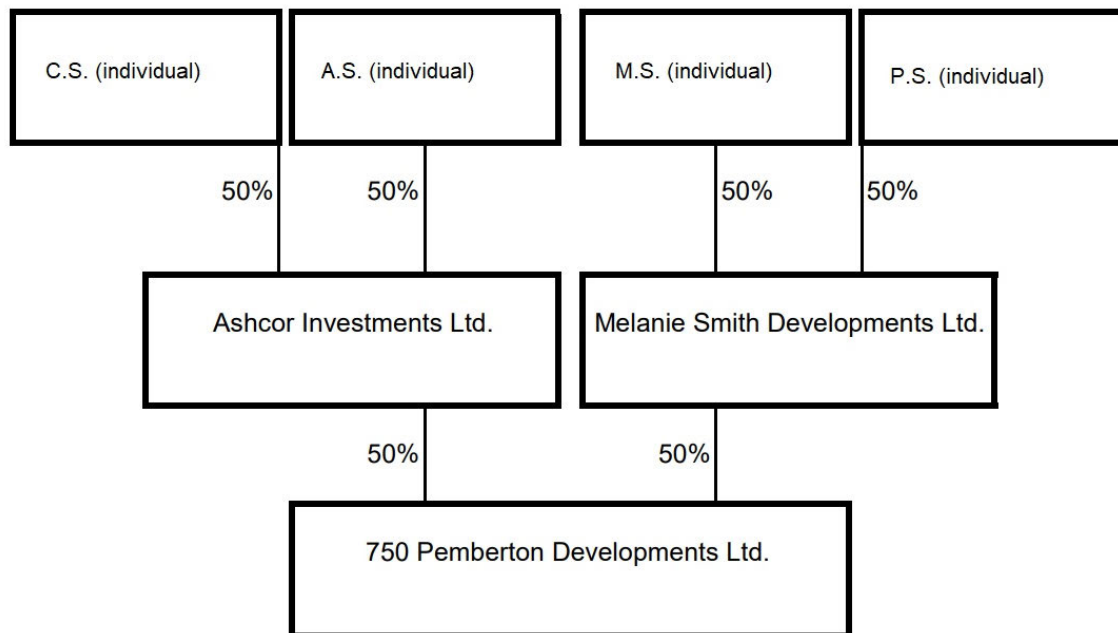
The landlord issued the Notice under section 49(4) of the Act which states that

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.

"Family corporation" is defined, under 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 corporate structure of the landlord is best explained by its organization chart:



C.S. and M.S. (who attended the hearing) are individual shareholders, along with their respective spouses, of Ashcor Investments Ltd. and Melanie Smith Developments Ltd. These two corporations in turn each own 50% of the shares in 750 Pemberton Developments Ltd. Based on the structure of the overall share ownership by the various entities, and because the landlord's shares are held by two corporations—and not, as the Act requires, shares held by an individual—it is my finding that the corporate landlord does not meet the definition of a “family corporation” as set out in the Act. To reiterate: none of the landlord's shares are owned by an “individual,” rather, they are owned entirely by corporate entities.

Further, I do not interpret the noun “individual” used in the definition of “family corporation” to encompass corporate entities, given that subsections 49(3) and 49(4) of the Act differentiate between “individuals” and “family corporations.” And I do not find it appropriate to interpret “individual” differently for the purposes of the definition of “family corporation” and allow it to include corporate entities. Consequently, I find that the Notice is not valid, as there is no basis under the Act for a corporate entity that is not a family corporation to end a tenancy so that a rental unit may be occupied by an individual shareholder or close family member of that shareholder.

Given that the Notice is invalid it is of no legal force or effect and it is cancelled. The tenancy shall continue until it is ended in accordance with the Act.

The tenant is entitled to recover the cost of the application filing fee and the tenant shall, pursuant to section 72(2)(a), make a one-time deduction of \$100.00 from his rent for November or December 2022 to recoup that cost.

Conclusion

The tenant's application is granted, and the Notice is hereby cancelled.

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 28, 2022

Residential Tenancy Branch