



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AKA Family Holdings Ltd, and AKA Family Holdings Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- cancellation of the landlords Two Month Notice to End Tenancy for the Landlord's Use ("Two Month Notice") pursuant to section 49
- recovery of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord represented by KD, SD, NG, and TP (agents). The tenant, IAS appeared for himself. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rules of Procedure 6.11. The parties were affirmed.

The landlord confirmed receipt of the dispute notice and the tenant's evidence package. The tenant confirmed receipt of the landlord's evidence package in response to the dispute notice. Service for both parties complies with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the Two Month Notice to End Tenancy for landlord's use valid and enforceable against the tenants? If so, is the Landlord entitled to an Order of Possession?
2. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced December 15, 2018 for a fixed term until October 14, 2019 and on a month to month basis thereafter. Rent is \$2,200.00 per month, due on the first of each month and the landlord currently holds a \$1,100.00 security deposit in trust for the tenants. The tenants still occupy the rental property.

The landlord served the Two Month Notice on the tenants by registered mail on September 21, 2022. A copy of the Two Month Notice was produced in evidence. The reason for the Two Month Notice is to allow a family member to move into the rental property.

The landlord is a family corporation, and the sole directors are KD and SD. The directors intend to move their daughter into the rental property. SD stated that their 21 year old daughter who currently lives at home with the family, wishes to occupy the rental property. The daughter is enrolled at a school in the area of the rental unit full time and in her fourth year of her program. She is writing her dentistry exam in January. The rental property will provide her with the quiet she needs to study, and the location of the rental property is a more convenient distance to the school and library where she studies. The landlord produced in evidence a copy of their daughter's driver's license, her birth certificate showing that the directors of the family corporation that is the landlord are her parents, and a copy of her confirmation of enrollment in the school. The landlord also produced in evidence an affidavit sworn by the directors' daughter stating that she is their daughter, she is enrolled in the school and she intends to occupy the rental property in order to pursue her studies.

The tenant IAS stated that the landlord is not acting in good faith. The landlord has made previous attempts to end the tenancy and have subjected the tenants to unlawful rent increases which the tenants accepted just to stay in the residence. They dispute that the rental property is a quiet place to study because there are many students residing there. They dispute that the commute to the school is more convenient from the rental property. They also state that because the daughter's address is edited from her driver's license and the number of credits she is currently taking in school is edited, it is impossible to assess whether the parents are being truthful about their daughter's need to occupy the rental property to pursue her studies.

Analysis

The tenants confirmed receipt of the Two Month Notice to End Tenancy dated September 14, 2022, sent by registered mail and received September 21, 2022, with an effective date of November 22, 2022. I find service was effected in accordance with section 88 of the Act.

There is no issue that the landlord is a family corporation and as such section 49(4) of the Act applies.

Rules of Procedure 6.6 states, "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. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the Two Month Notice served on the tenants.

The Two Month Notice was provided in evidence, and I find that it meets the form and content requirements under section 52 of the Act. In this case the landlord is a family corporation. Section 49(4) of the Act permits family corporation to issue a Two Month Notice if a close family member of a person owning voting shares in the family corporation intends in good faith to occupy the residence.

The tenants have questioned whether the landlord is acting in good faith in this case. Specifically, they question whether the daughter actually intends to occupy the rental property. RTB Policy Guideline 2A states in part:

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.

The landlord has provided an affidavit sworn by the directors' daughter stating her intention to occupy the residence and the reasons she wishes to live there. The daughter also has provided a copy of her enrollment in a school program. I find based on the affidavit evidence and supporting documentation confirming the statements made in the affidavit, that the landlord has established that the directors' daughter intends in good faith to occupy the residence.

The tenant's statement that the residence is noisy and less convenient for the daughter does not rebut the evidence provided by the daughter in her sworn affidavit. Section 49(4) only requires the landlord to establish that the daughter intends to occupy the residence, and while the reasons why the daughter wishes to occupy the residence can be helpful in establishing good faith, convenience and noise levels alone are not determinative of a lack of good faith and are speculative at best. The tenants have similarly referenced previous attempts to end the tenancy and rent increases as evidence of a lack of good faith. Without further evidence to demonstrate how these actions are evidence of a lack of good faith I am not placing significant weight on previous attempts to end the tenancy, as it could be equally true that the landlord was unsuccessful because they didn't have the requisite evidence, or a change of circumstances caused the tenancy to continue. Under section 49, I must consider the evidence in front of me in respect of the Two Month Notice dated September 14, 2022.

I find that based on the evidence before me, section 49(4) of the Act has been satisfied by the landlord, and they have established that the directors' daughter intends in good faith to occupy the residence.

The Two Month Notice is valid and enforceable. The landlord is entitled to an order of possession pursuant to section 55(1) of the Act dated the effective date of the Two Month Notice, Section 49(2)(a) requires the effective date of a Two Month Notice be the last day before rent is due. Therefore the effective date for the Two Month notice is changed pursuant to section 53 of the Act, to November 30, 2022.

As the tenant was unsuccessful in their application, I do not grant their application to recover the \$100.00 filing fee.

Conclusion

The Landlord is granted an order of possession which will be effective November 30, 2022. The order of possession must be served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: November 2, 2022

Residential Tenancy Branch