



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated June 21, 2022 ("Two Month Notice"); and to recover his \$100.00 Application filing fee.

The Landlord, counsel for the Tenant, M.K. ("Counsel"), and two agents for the Tenant, J.H. and L.R. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. The Tenant submitted an authorization for these Agents to represent him in the hearing.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Agents and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of his \$100.0 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began earlier than what the tenancy agreement states as January 1, 2012. The Agents indicated that the Tenant had originally moved into the residential property on January 1, 2002, and has lived there ever since. The Landlord said that this dates back to before he and his siblings acquired the residential property. They agreed that the Tenant pays the Landlord a current monthly rent of \$1,851.00 plus parking, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$637.50, and no pet damage deposit.

The Parties both submitted copies of the Two Month Notice, which was signed and dated June 21, 2022, and which has the rental unit address. The Two Month Notice was served in person on June 21, 2022, with an effective vacancy date of August 31, 2022. The Two Month Notice was served on two grounds, first, that the Landlord and/or the Landlord's spouse will occupy the rental unit, and second, 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.

I explained to the Parties that when a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an order of possession if – first - I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the

Landlord for this proceeding.

As a result, I asked the Landlord why I should confirm the Two Month Notice and give him an order of possession, rather than cancelling it, as the Tenant requests. The Landlord said:

The simple answer is that if you're an owner, you can have access to the suite if you're going to use it. My sister is going to be moving in, and she's a 20% owner of the building. She moved to [the city] for health reasons. She was on an acreage in the [country], and wants to move closer to family. She's moved her stuff out.

We didn't take it lightly. We've never kicked anyone out. It's not a nice thing, granted. We wished someone would leave by attrition. She wanted a two-bedroom, and we randomly picked this one, so she's an owner and wants to be in it, and that's how I read the Act.

Counsel directed me to the Agent, J.H., for comments on why I should cancel the Two Month Notice. The Agent said:

I have quite a lengthy submission, but it summarizes all the issues. It starts with a summary of applicable law. As identified on June 21, [the Tenants] were served with an eviction notice. It was served reportedly under section 49 (4) – that shareholders of a family corporation would occupy the rental unit. Policy Guideline #2A ["Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member" (PG #2A)] outlines the test to be satisfied to allow a qualifying landlord to end a tenancy under section 49.

Under [PG #2A], section 49 (3) is not an applicable ground, as the ownership structure is not an individual, but a corporation.

The Agent then referred me to a title search of the property, which confirms that the owner is a corporation. However, I was not provided with a legal description or parcel identifier for this residential property. I have only a street address to identify it. Nevertheless, the Landlord did not dispute that Counsel's title search represents the residential property in question before me.

The Agent continued:

Section 49 (4) says that if the landlord is a family corporation and a person

owning voting shares intends in good faith to occupy the rental unit – this is the ground being advanced by the Landlords.

Further, the language surrounding a close family member is not relevant, because [B.V.] intends to occupy the unit. I note that there's a statutory declaration by the Landlord, wherein he confirms that it's his sister, [B.V.], who will occupy the unit.

Coming back to the brief, for an eviction notice to stand under 49 (4), the following must be held to be true: First, the company must meet the definition of a corporation; and second, the landlord must hold a reversionary interest exceeding three years, and must hold not less than half of the full reversionary interest. Third, the Landlord must be dealing at all times in good faith. In *Gichuru v Palmar Properties Ltd.*, it states that the landlord must not have dishonest motive – good faith means an absence of bad faith, with the burden of proof being on the landlord

The company may not satisfy the definition of a family corporation, and not a definition of a landlord under section 49 (4). It does not establish that it meets the definition of family corporation. It is silent as to voting shares – there is no reference to the remainder of the share structure and the voting rights.

Regardless of whether the company meets the definition of a family corporation, it doesn't meet the definition of landlord under section 49 (4). The landlord must have a reversionary interest in the rental unit exceeding three years and not less than half of the full reversionary interest.

In a letter dated October 31 the Landlord's lawyer indicates that the company owning the residential property it is a bare trust company. It has no interest in the building and cannot have any reversionary interest, therefore the eviction notice must fail.

[emphasis added]

I infer the relevant paragraph in the lawyer's letter states:

Title to the property in question (being [residential property street address]), is held by [company name] (a family holding corporation) as one of the [V.] Family Properties. [B.V.], as one of the [V.] family siblings, is the ultimate beneficial owner of a 20% interest in [residential property street address].

The Agent continued:

. . . The interest is beneficially owned by five siblings, each with a 20% interest, therefore, none owns a reversionary interest not less than 50%.

Further, the [family] has not met the test under the Act to act in good faith with no dishonest motive. There are several incidents of dishonest motive that should result in the dismissal of this eviction notice, and the Landlord being instructed to cease further harassment of the Tenant.

The Tenant is the father of my wife; he is 84-years-old and suffers from developing dementia. He was a pastry chef at He has lived there for over 25 years.

The Agent continued to explain that due to the Tenant's condition - progressive dementia – he has a fragile mental condition. The Agent said that this move is not medically recommended - that it would worsen his condition. "Stability is best way to manage his condition, and he should not be moved for any reason", said the Agent.

The Agent commented on the Landlord's family, saying that the Landlord and his siblings grew up in the city, and that they each own 20% of the family land holdings. He said:

A search comes up with nine buildings and 310 apartments worth \$154 million - great family wealth.

They purchased the property in 2019, and in March 2020 Covid hit. The reversionary interest period commenced on August 31, 2022, and on June 21, 2022, the eviction notice was served on the Tenants.

The Agent referenced other letters sent to other tenants in the building, encouraging them to move out with financial incentives offered. He said the Landlords want: "To renovate the units and update the homes to re-rent – to re-rent the apartments at a higher price."

The Agent then referred to a statutory declaration declared by [B.V.] on October 20, 2022 ("Stat Dec"). The Agent said that the Landlord and his lawyer were aware of the contents of this Stat Dec.

The Agent referred me to other documents submitted by the Landlord confirming that

the company holding the residential property building holds it as a bare trust and that the company has no interest in the building, and therefore, no reversionary interest.

Near the end of the hearing, Counsel asked the Landlord if the company that owns the residential property is a bare trust, and the Landlord confirmed that this was true. He also confirmed that his sister, [B.V.] owns 20% of the company, as do the other four siblings. The Landlord said:

Yes, a bare trust , Revenue Canada thinks she owns 20% and yes, a bare trust is just to hold the property. I'm not disputing it. If she has to be a 50% owner, she doesn't meet the criteria. I never knew that. But if that's the law, we lose, but I don't think it is.

However, the Landlord did not direct me to any evidence disputing the Agent's testimony.

In the [Landlords'] initial subs and in [B.V.'s] Stat Dec, the Landlord advanced that the company was a family corporation, as defined under section 49 of the Act, implying that it also meet the definition of "Landlord" under section 49; and that [B.V.'s] ownership of two common shares qualified her for a 50% reversionary interest.

The Agent continued:

We know now that the corporation is a bare trust to solely hold property for the owners. The company has no interest, itself, and therefore, it can't have a reversionary interest. Furthermore, [B.V.], along with her other siblings, owns a 20% interest, therefore, none can have a reversionary interest of not less than 50%. The [Landlords] as professional landlords, and their lawyer would have known always that the bare trust company could never be a landlord under 49 (4), since it contains no interest in the building. They colluded to make misrepresentations to serve an eviction notice on an 84-year-old man with 20 years in their building; very bad. That their lawyer would similarly participate in these misrepresentations for evicting an 84-year-old senior with dementia is very bad.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

PG #2A states:

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.

"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.

[emphasis added]

Based on the evidence before me overall in this matter, I find that the "Landlord" before me, does not qualify as a Landlord pursuant to PG #2A - not as individuals and not as a family corporation. The corporation owns the residential property; however, the Parties agreed that it holds it in a bare trust. It, therefore, does not have reversionary interest in the property. Similarly, the co-owner, [B.V.], who wants to move into the rental unit does not have a right to a reversionary interest of at least 50%, and as a result, I find that she does not have the right under the Act or PG #2A to evict the Tenant in this situation.

I, therefore, cancel the Two Month Notice, rendering it void and unenforceable. The tenancy will continue until ended in accordance with the Act.

Given the Tenant's success in this matter, I also award him recovery of his \$100.00 filing fee from the Landlord, pursuant to section 72 of the Act. The Tenant is authorized to deduct \$100.00 from one upcoming rent payment in complete satisfaction of this award, and pursuant to section 72 of the Act.

Conclusion

The Tenant is successful in his Application to cancel the Two Month Notice, as the Landlords failed to provide sufficient evidence that they had a right under section 49 and PG #2A to evict the Tenant for the Landlord's use of the property.

The Two Month Notice is cancelled and is of no force or effect. The tenancy continues until ended in accordance with the Act.

Given the Tenant's success in this matter, I also award him recovery of his **\$100.00** Application filing fee from the Landlord. The Tenant is **authorized to deduct \$100.00 from one upcoming rent payment** in complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 18, 2022

Residential Tenancy Branch