



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GS KANG & SONS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on September 29, 2022, wherein the Tenants sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on September 29, 2022 (the "September Notice"), an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act") the *Residential Tenancy Regulation* and/or the residential tenancy agreement and recovery of the filing fee.

The hearing of the Tenants' Application was scheduled for 11:00 a.m. on November 22, 2022. Both parties called into the hearing. The Tenant D.M. called in as did the Tenants' advocate D.V. The Landlord was represented by the owner, M.K. and an advocate J.D.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The parties have attended numerous hearings before the Residential Tenancy Branch; the file numbers for those matters are included on the unpublished cover page of this my Decision.

Most recently, the parties attended a hearing before Arbitrator Wang on July 25, 2022. The nature of that hearing related to a Tenants' Application for Dispute Resolution in which they sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use served April 3, 2022 (the "April Notice"). The reasons the Landlord sought to end the tenancy in that case was that the rental unit would be occupied by the Landlord or the Landlord's spouse, or a close family member of the Landlord or the Landlord's spouse.

The Arbitrator considering the Application granted the Tenants' request and cancelled the April Notice for these reasons:

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.

The rental unit is owned by a limited company. At the July 25, 2022 hearing the Tenant did not take issue with the fact the Landlord issued the April Notice as an *individual* Landlord pursuant to section 49(3) of the *Act*, and not a *majority shareholder* of a family company pursuant to section 49(4). As such, I find that the nature of the application on July 25, 2022 and the application before me are the same.

The Landlord issued the September Notice on September 29, 2022, the validity of which is the subject of the hearing before me. The reasons for ending the tenancy were noted as the same as the April Notice, namely, that the property would be occupied by the Landlord or a close family member as defined by the *Act*. The parties confirmed that nothing had changed since the July 25, 2022, hearing and that the Landlord's reasons for wishing to end the tenancy are the same.

Section 77(3) of the *Residential Tenancy Act* (the "*Act*") provides that, except as otherwise provided, a Decision is final and binding.

As discussed during the hearing, the legal principle of *Res judicata* ("the matter is judged") prevents a party from pursuing a claim that has already been decided. *Res Judicata* is an equitable principle that, when its criteria are met, precludes relitigation of a matter. There are a number of preconditions that must be met before this principle will operate:

1. the same question has been decided in earlier proceedings;
2. the earlier judicial decision was final; and
3. the parties to that decision (or their privies) are the same in both the proceedings.

All three of the above preconditions apply in the case before me. The question of the validity of the April Notice was decided by Arbitrator Wang on August 21, 2022 and the decision was final. Further, the claim before me relates to the same parties as in the matter before Arbitrator Wang. In this case, Arbitrator Wang already canceled the April Notice which was issued for the exact same reasons as the September Notice, the one which is the subject matter of the dispute before me. There is no jurisdiction under the *Act* that allows my reconsideration of this issue.

Should the Landlord disagree with Arbitrator Wang's decision, the only avenue possibly available to the Landlord in this case is to request Review Consideration under the very limited grounds set forth in section 79 of the *Act*, or to pursue a Judicial Review in the B.C. Supreme Court.

The Tenants' request to cancel the September Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenants' Advocate confirmed that the Tenants' request that the Landlord comply with the *Act*, *Regulations*, and/or tenancy agreement related to their request that the Landlord be prohibited from issuing any further notices to end tenancy. As discussed, the Landlord retains the right to issue further notices, however, the Landlord is cautioned against issuing further notices pursuant to section 49(4) of the *Act*, unless circumstances change significantly.

The Tenants request to recover the filing fee is granted. Pursuant to section 72 of the *Act* they may reduce their next months' rent by \$100.00.

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: December 9, 2022

Residential Tenancy Branch