



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 522032 BC LTD AND 1364303 BC LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant September 08, 2022 (the "Application"). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 30, 2022 (the "Notice")
- To recover the filing fee

The Tenant appeared at the hearing with their son, J.B., to assist. T.S. and V.C. appeared at the hearing for the Landlords. 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.

V.C. was named on the Application as a landlord; however, T.S. took the position that V.C. should not be named and therefore I removed V.C. because this change has no impact on the Tenant given the nature of the Application.

The Tenant submitted evidence prior to the hearing. The Landlords did not submit evidence. I addressed service of the hearing package and Tenant's evidence and T.S. confirmed receipt of these.

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. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is the original tenancy agreement in this matter. The agreement is between a prior owner of the rental unit and the Tenant. The tenancy started March 01, 2021. Rent in the agreement is \$2,500.00 per month. The agreement has a one-page addendum.

The parties agreed the Landlords purchased the rental unit August 22, 2022. The parties agreed no new tenancy agreement has been entered into.

T.S. submitted that only the numbered company starting 522 is the landlord in this matter and that the numbered company starting 136 owns the rental unit but holds it in trust for the numbered company starting 522.

The Notice was submitted. Two mutually exclusive grounds have been checked off on the Notice; however, T.L. confirmed at the hearing that the Notice was issued on the ground that the Landlord (numbered company starting 522) 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 Tenant, in person August 30, 2022.

The Tenant testified that only two pages of the Notice were served whereas T.L. testified that all four pages of the Notice were served.

T.L. testified that their son, A.S., intends to move into the rental unit and this is why the Notice was issued.

The Tenant submitted that the Notice was issued because they would not sign a new tenancy agreement at a higher rent amount. The Tenant pointed out that the Landlord

has not submitted any evidence from their son about intending to move into the rental unit.

Although both parties provided further testimony and made further arguments at the hearing, I find the above to be the relevant evidence and therefore I have not reproduced the remaining testimony or arguments of the parties here.

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.

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. The Tenant received the Notice August 30, 2022, in person. The Application was filed September 08, 2022, within time.

The Landlords have the onus to prove the grounds for 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.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the Tenant has disputed the stated reason of T.L. for issuing the Notice and provided a basis for their dispute. I find the Landlords have failed to prove A.S. intends to move into the rental unit because the Landlords have provided no evidence from A.S. about this. There is no documentary evidence before me to support the Landlords' position. A.S. did not appear at the hearing as a witness to provide affirmed testimony about their intention. T.L.'s testimony alone is not sufficient to prove A.S. intends to move into the rental unit.

Given the absence of evidence from A.S., I am not satisfied the Landlord has met their onus to prove the grounds for the Notice. The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment.

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: January 26, 2023

Residential Tenancy Branch