



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to resolve a residential tenancy dispute. The tenant applied on September 12, 2022 for an order to cancel a Two Month Notice for Landlord's Use, dated August 31, 2022 (the Notice).

The hearing was attended by the tenant, his counsel, and the respondent's agent. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither side raised an issue regarding service of the hearing materials.

Preliminary Matter

The Notice of Dispute Resolution Proceeding indicates the Residential Tenancy Branch received payment for the tenant's application on September 23, 2022. In support of the tenant's position that he applied in time to dispute the Notice on September 12, 2022, the tenant submitted a copy of his paper application, stamped received by the Residential Tenancy Branch on September 12, 2022 and a copy of the receipt for the filing fee he paid on September 12, 2022. I find the application was submitted on September 12, 2022.

Issue to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenancy began on September 1, 2018. Rent is \$3,045.00, due on the first of the month. The tenant paid a security deposit of \$1,500.00, which the landlord still holds in trust. A copy of the tenancy agreement is submitted as evidence.

On August 30, 2022 the tenant was notified by letter that the rental unit had been purchased and rent is now payable to 'APCFD Limited Partnership'. The letter is signed by 'PD Corporation'. Beneath the signature for PD Corporation is a place for another signature, which is blank; the description for this signature is as follows: "APCFD Limited Partnership' by its general partner 'APFD Ltd.' by its authorized signatory."

The respondent's agent testified they served the Notice on the tenant in person on August 31, 2022, which the tenant confirmed. A copy of the Notice was submitted as evidence by the tenant. As noted above, the tenant filed to dispute the Notice on September 12, 2022.

The respondent's name is given as the landlord on the Notice. The Notice is dated, gives the address of the rental unit, and gives an effective date of November 1, 2022. The Notice is in the approved form (RTB-32) and states the tenancy is ending because the landlord or the landlord's spouse will occupy the unit.

The respondent's agent testified that the unit was purchased by a property development corporation, and that the respondent is a director of the corporation and intends to renovate and live in the unit for a couple years during the project, which will take a few years to complete. The respondent provided no documentary evidence.

Analysis

The respondent issued the Notice pursuant to section 49(3) of the Act, which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

For the purpose of section 49(3) a "landlord" means an individual 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.

Section 13 of the Act requires a written tenancy agreement to include the landlord's correct legal name.

Based on the testimony of the parties and the tenant's evidence of the August 30, 2022 notification about the change in landlord, there are three possible entities who are the tenant's landlord: APCFD Limited Partnership, PD Corporation, and APFD Ltd.

The respondent is an individual. APCFD Limited Partnership, PD Corporation, and APFD Ltd. are not individuals.

The landlord's agent did not substantiate the correct legal name of the landlord or that the respondent is a landlord who has a tenancy agreement with the tenant. I order that the Notice is canceled. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The tenant's application is granted, and I order that the Notice is 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 *Residential Tenancy Act*.

Dated: February 08, 2023

Residential Tenancy Branch