



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- the cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing and was assisted by an advocate ("**KC**"). The landlord was represented by counsel ("**KO**"). One of its shareholders ("**DD**") attended the latter portion of the hearing as a witness. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties agree that the tenant served the notice of dispute resolution package on the landlord, but that he did not serve any of the documentary evidence provided to the Residential Tenancy Branch (the "**RTB**"). As such, I exclude these documents from the evidentiary record.

The parties agree that the landlord served the tenant with its documentary evidence.

Preliminary Issue – Interim Decision and Landlord as "Family Corporation"

On January 13, 2023, I issued an interim decision in which I ordered the landlord to provide documentation relating to whether the landlord is a "family corporation". The land did this on January 20, 2023. On January 26, 2023, KC provided an email to the RTB in which he wrote:

I have received the documents regarding the incorporation and shareholders of the [landlord]. It is my opinion that this corporation meets the requirements of section 49(1) of the *Residential Tenancy Act*. If I am mistaken in my interpretation as it relates to the most recent two-month notice served to my client, I have no doubt by mistake will be corrected by the arbitrator...

I agree with KC's assessment. Section 49(1) of the Act defines "family corporation" as:

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

The landlord provided its Central Securities Registry and an excerpt from its Articles of Incorporation which set out the voting rights of its classes of shares. The registry shows that there are three individuals who own Class “A” shares, and one corporate entity which owns Class “C” shares. The Class A owners are DD, her husband (“AD”), and their son (“CD”). They are all “close family members” as defined by the Act. The articles state that Class “A” shares are voting shares, whereas Class “C” shares are not.

As such, I find that the landlord is a “family corporation” for the purposes of the Act.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

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 rental unit is an apartment located in a multi-unit residential property (the “**Building**”). The tenant entered into an oral tenancy agreement with the prior owner of the Building on July 10, 2011. Monthly rent is \$700. The tenant paid the prior owner of the building a security deposit of \$375, which the landlord continues to hold in trust for the tenant. The landlord purchased the Building from the prior owner of the Building and took possession of it in March 2022.

The building has three other two-bedroom apartments, which have monthly rents or \$650 or \$750.

On March 18, 2022, the landlord served all the tenants in the Building with a notice of rent increase.

On March 31, 2022, the landlord served the tenant with a two-month notice to end tenancy for landlords use (the “**March Notice**”). The tenant disputed it, and the parties appeared before an arbitrator of the RTB on August 16, 2022. Following that hearing, the presiding arbitrator issued a decision in which he cancelled the March Notice as it did not comply with the form and content requirements of section 52 of the Act .

Later that same day (August 16, 2022), the landlord served the tenant with a second notice to end tenancy for landlord use (defined above as the “Notice”). It specified an effective date of October 31, 2022 and set out the reason for ending the tenancy as “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.”

The tenant disputed the Notice on August 25, 2022.

At the hearing, DD testified that her son, CD, intended to move into the rental unit. CD current works in the city where the rental unit is located, but lives an hour's drive away. CD does not own any other properties and has been saving up for many years to buy a property of his own.

The landlord submitted an affidavit from one of its directors ("**GA**"), in which he stated:

CD informed the directors of the landlord before purchasing the property that he would only agree to purchase the property if he was able to move into a two-bedroom unit of his choice because he was contributing all of his savings which he had saved to buy a primary residence in [the municipality in which the rental unit is located]. All of the directors agreed and notice was given to [the tenant] in good faith.

GA attached a Director's Resolution of the landlord dated March 5, 2022 stating:

[...]

2. [CD], a director of the company, is authorized to move into a two-bedroom unit of his choice at the property anytime after the completion of the purchase of the property.

3. [CD] is hereby permitted to live at the property in a 2 bedroom of his choice as his primary residence for any length of time while the company owns the property

The landlord submitted an affidavit from CD in which he wrote:

As of August 16, 2022 there were no two-bedroom units available at the property. On March 31, 2022 I intended on moving into [the rental unit closed bracket in good faith as my primary residence, as I still intend on moving into, and occupying [the rental unit closed bracket as my primary residence.

DD stated that CD selected the rental unit (as opposed to one of the other two-bedroom units in the Building) as it had sufficient storage for his tools and work equipment and that it was on a higher floor than other two-bedroom units, which gave it a better view.

The tenant argued that the landlord is evicting her due to her disputing the March 18, 2022 rent increase. She stated that the landlord insisted that her monthly rent was \$750, and not \$700, and issued the rent increase on that basis. She also suggested that the Notice was not issued in good faith because, the landlord did not offer to relocate her to a different rental unit in the Building which became vacant after the March Notice was issued, but before the hearing on August 16, 2022 occurred.

The tenant testified that after receiving the March Notice she asked DD if there were other rental units available that she could move in to, and that DD told her that there was a long wait list for the Building. DD denied that such a conversation took place, and testified that the tenant never asked her if she could move into another unit in the Building, and that the unit in question was rented to someone else starting August 1, 2022. She testified that she did not offer this unit to the tenant because she “couldn’t read [the tenant’s] mind” and did not know if the tenant wanted to move to another unit in the Building.

Analysis

Section 49(4) of the Act states:

49(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.

RTB Policy Guideline 2A discusses the “good faith” requirement. It states:

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

[...]

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

Based on the evidence presented at the hearing, I do not find that the landlord acted in bad faith, and that it had the requisite good faith, when issuing the Notice.

I accept CD's affidavit evidence that he intends to reside in the rental unit. This evidence is corroborated by GA's affidavit, the attached Directors' Resolution, and DD's testimony. I accept that CD commutes an hour to work, and that if he resided in the rental unit, this commute would be substantially shorter. I also accept that the landlord purchased the Building with the intent to allow CD to reside in it.

I do not find that the landlord selected the tenant's rental unit as the unit CD would live in for any bad faith or ulterior purpose. I accept DD's testimony that the landlord issued rent increases to all tenants in the Building after it acquired it. While I accept that there was a dispute between the parties about the amount of the tenant's rent, I do not find it was more likely than not that this was the impetus for the landlord issuing the Notice. I accept DD's testimony that the size and placement of the rental unit were the factors which caused CD to select the rental unit as the one he wanted to live in.

I do not find that the amount of monthly rent the tenant was paying to have been a factor for the landlord when the notice was issued. I accept that another two-bedroom rental unit in the Building is rented at \$650 per month. If the landlords motive for issuing the notice was informed by desire to eliminate a low paying tenant, I find it likely that the lowest-paying occupant would have been the recipient of a notice to end tenancy.

Additionally, I do not find that the landlord's alleged failure to offer the tenant and opportunity to move into a vacant two-bedroom unit in the building to be a sign that the Notice was not issued in good faith. At the time this unit became vacant, the March Notice have already been issued and the hearing to dispute it had not yet occurred. The unit in question was re-rented on August 1, 2022. As such, when the landlord issued the Notice, the unit was not available for CD to move into. The Act does not obligate the landlord to make efforts to assist a tenant in relocating in anticipation of a tenancy ending. I do not find that the landlord's failure to do this amounts to a lack of good faith.

For these reasons, I find that the notice was issued in good faith. Accordingly, I dismiss the tenant's application to cancel it without leave to reapply and I decline to order that the landlord reimburse the tenant the filing fee for this application.

Section 55 of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the notice and find that it complies with the section 52 form and content requirements. As such, and as I have dismissed the tenant's application, the landlord is entitled to an order of possession.

At the hearing, the parties agreed, in the event the Notice was upheld, an appropriate date for the order of possession would be June 1, 2023.

Conclusion

I dismiss the tenant's application, in its entirety, without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by June 1, 2023 at 1:00 pm.

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 1, 2023

Residential Tenancy Branch