



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1370955 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

On March 10, 2023, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting the following relief:

- to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property dated February 27, 2023 (“the Two Month Notice”).
- to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Landlord and Tenant appeared at the hearing. The Landlord and Tenant were assisted by legal counsel. The hearing process was explained and the participants were asked if they had any questions. The parties confirmed that they have exchanged the documentary evidence before me. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Does the Landlord have sufficient reason to end the tenancy based on the Two Month Notice?

Background and Evidence

The Landlord and Tenant agreed that the tenancy began in 1981 and is on a month to month basis. Rent in the amount of \$1,090.00 is to be paid to the Landlord by the first day of each month.

The residential property is a multi-unit building containing eight units. The residential property was purchased by a group of co-owners. The Landlord and Tenant provided a copy of a Joint Venture Agreement (“the JVA”) which provides that the purpose of the agreement is to co-ordinate the ownership by the co-owners of their separate interests in the residential property and to set forth the rights and obligations between the co-owners.

The Landlord, Ms. J.L.P., is a co-owner of the residential property and intends to occupy unit #6. The Landlord served the Tenant with the Two Month Notice in person on February 27, 2023. The Two Month Notice cites the following reason for ending the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord’s spouse or a close family member. The Landlord or the Landlord’s spouse.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

On March 10, 2023, the Tenant disputed the Two Month Notice by applying for Dispute Resolution within the required time period.

The Landlord’s counsel there are two main issues to this dispute.

- Is Ms. J.L.P. a Landlord under the Act?
- Does the Landlord have a good faith intention to occupy the rental unit?

The Landlord’s counsel submitted that Ms. J.L.P. is a party within the JVA and is named as a co-owner with other owners to live cooperatively and reside in various units. He submitted that the legal title holder of the residential property is a numbered company. The Landlord’s counsel referenced section 2.6 of the JVA which provides that legal title to the property in the respective land title office shall be held by the Company, and the Company as the legal owner shall hold the property in trust for the co-owners as set forth in the Agreement.

The Landlord's legal counsel submitted that each co-owner owns the entire reversionary interest of a unit as set out in section 2.7 and schedule F of the JVA. He submitted that the Landlord is the owner of unit #6 and she has the full reversionary interest of unit #6. Counsel referred to section 2.3 of the JVA that states the beneficial interest in the Property shall be owned by the co-owners as tenants-in-common.

The Landlord's legal counsel referred to the definition of Landlord as set out in section 49(1) of the Act. He submitted that the Landlord had full reversionary interest at the time of serving the Two Month Notice and the definition of Landlord under the Act includes the owner of a rental unit or alternatively a person entitled to possession of the rental unit. He stated that the execution date of the JVA was February 24, 2023.

The Landlord's counsel provided a copy of a RTB decision and submits that the decision demonstrates that beneficial interest can be a landlord even though they don't have legal title. He submits that the RTB decision is analogous to the issue before me.

In reply, the Tenant's legal counsel cross examined Ms. L.R. who is listed as a co-owner in the JVA with full reversionary interest of units #1 and unit #3. Ms. L.R. testified that she is a director, and shareholder of the company and is a co-owner of the property along with a person named S.H. She testified that Ms. J.L.P. is also a director of the company.

The Tenant's counsel submitted that there are eight units on the property and four units have been vacated. Ms. L.R. replied that co-owner S.H. is moving into one of the units and that she moved into unit #4. She stated that two tenants gave notice and moved out and another tenant decided to vacate a unit. She stated that a co-owner K.G. will be moving into unit #2.

The Tenants legal counsel asked how K.G. will be moving into unit #2 when they are not named in the JVA. Ms. L.R. replied that they are working with their lawyer now to make that change.

Ms. L.R. stated that they spoke to the Residential Tenancy Branch in April, May, and June of last year and were advised by their lawyer that issuing the Two Month Notice was ok.

The Tenant's counsel asked Ms. L.R. if the JVA changes if a co-owner changes units? and L.R. replied that she is unsure.

The Tenant's counsel asked about the units being listed at the land title office and Ms. L.R. confirmed that the individual units are not listed and that their lawyer informed them this is ok.

The Tenant's counsel questioned the Tenant who stated that he is 82 years old and has a written tenancy agreement with the previous Landlord, but not with Ms. J.L.P. He stated that he may be confused on everyone who has moved into the rental units; however, he stated that Ms. L.R. moved into unit #4 and then unit #1. He stated that some units have been rented out as short term rentals.

In reply, Ms. L.R. replied acknowledging that on a couple units where tenants gave notice; those rental units were rented out as short term rentals.

The Tenant's counsel made submissions on the legal question of who is the Landlord. He submitted that the Act prevents a group of investors from evicting tenants. He submitted that the Landlord has to be a Landlord as defined under the Act, and that a numbered company cannot purchase individual suites and qualify. He submitted that section 49 of the Act could not be intended to allow a shareholder to end a tenancy to occupy a rental unit, and he also pointed out that the company is not a family corporation. The Tenants counsel submitted that Section 49 of the RTA is designed to limit the type of landlords who can issue an eviction for personal use of property. He submits that this was specifically acknowledged by the B.C. Supreme Court in the case of *V.I.T. Estates Ltd. v. New Westminster*, 2021 BCSC 573 where Justice Saunders stated:

"Landlords under RTA lease agreements are not compelled or obliged to repossess their units on the grounds set out in s. 49. Rather, s. 49 limits the circumstances in which the right of repossession may be exercised".

The Tenant's counsel stated that at any given time they can change their JVA which is different than having title of ownership at the Landlord titles office.

The Tenant's counsel stated that the RTB case cited by the Landlord relates to a penalty provision rather than a dispute under section 49 of the Act. Counsel stated that he does not believe that the decision was correct.

The Landlord stated that she will be to occupying the rental unit and she is waiting to move from out of town into unit #6. She stated that her home office for work is located in the city.

Analysis

Section 1 of the Act provides the definition of landlord as follows: "landlord" in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this.

Section 49(1) of the Act provides a further definition of landlord and purchaser for the purposes of issuing a Two Month Notice or a Four Month Notice. With regard to ending a tenancy for a Landlord to occupy the rental unit; 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.

With regard to ending a tenancy for a family corporation to occupy the rental unit; landlord means a family corporation that 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.

The Landlord issued the Two Month Notice under section 49(3) of the Act. Section 49(3) of the Act permits a landlord who is an individual to 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.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

The first issue to determine is whether or not the Landlord meets the definition of Landlord under section 49(1) of the Act. The onus is on the Landlord to show on a balance of probabilities that the Two Month Notice was validly issued and that section 49(1) applies.

Under section 1 of the Act a landlord can be a "person" who is entitled to possession and exercises the right of a landlord under the Act. Under section 49(1) landlord means an "individual" who has a reversionary interest in the rental unit. The Act provides these different definitions for landlord. I find that a person and an individual have different meanings under the Act.

If "individual" was intended to include a corporation there would be no need to have a separate and specific provision for a family corporation.

The definition of "person" can include a corporation. I find that "individual" is intended to mean a living person and not a corporation. Under section 49(1) of the Act "close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse.

I have considered the submission of the Tenants counsel regarding K.G. who is moving into unit #2 but is not named in the JVA. I note that Ms. L.R. stated that she is unsure if the agreement changes if an owner changes units. I also note that the Tenant stated he may be confused; however, Ms. L.R. has lived in unit #4 and unit #1.

I have reviewed the Joint Venture Agreement. Section 2.7 provides:

“Each of the Co-Owners shall beneficially own the entire reversionary interest (the “Reversionary Interest”) in respect of a Unit on the basis set forth in Schedule “F”. For clarity, the respective Reversionary Interest of a Co-Owner is included in their “Interest” as defined herein. For clarity, any Unit in which the Reversionary Interest has not been transferred to a specified Co-Owner pursuant to this Agreement, and subsequently noted on Schedule “F”, is to have such Unit’s beneficial interest (including the Reversionary Interest of such Unit) owned jointly by all of the Co-Owners unless otherwise stated on Schedule “F”.

Section 2.15 of the JVA provides:

“Schedule “F” may be amended by the Co-Owners after changes have been duly made in accordance with this Agreement to the number of Co-Owners, respective Interests of Co-Owners, ownership of the Reversionary Interests, or any of the Venture Percentage Interest, Percentage Participation, Additional Financial Contribution, or Initial Financial Contribution of any Co-Owner. Such amendment may be made only in order to update Schedule “F” to be accurate. Such amendment shall be made by scheduling a revised Schedule “F” to the respective transfer of beneficial interest, resolution, and/or amendment to this Agreement, as applicable, and then distributing such revised Schedule “F” to all of the Parties once a transfer, resolution, and/or amendment has been completed in accordance with the terms of this Agreement and the terms of the instrument thereof.”

It appears to me that the JVA permits the co-owners to make changes to ownership of reversionary interests and to the number of co-owners of the property and to amend schedule F. I find that this arrangement could allow a co-owners of the property to change ownership and interest in one unit to another simply by amending the JVA. I find that the nature of this JVA in regards to interest and ownership is more similar to the operation of a corporation than that of an individual landlord.

The Act does not prevent an individual landlord, or an individual of a family corporation, from re-renting a rental unit after occupying the unit for at least 6 months. A corporate landlord cannot end a tenancy for Landlord’s use of property.

If Ms. J.P. is found to be an individual landlord based on the structure of the JVA, Ms. J.P. or the other co-owners of the property who have ended tenancies based on service of a Two Month Notice would have a legal right to vacate their units after occupying it for 6 months and then re-rent the unit(s) at a higher rent.

With regard to the previous RTB decision dated May 30, 2022, I have reviewed the Decision and I find that it is related to a claim for compensation rather than whether or

not a tenancy is ending based on the issuance and dispute of a Two Month Notice. The Arbitrator found that the purchaser or close family member occupied the rental unit and dismissed the Tenant's claim for compensation. I find that the decision is not directly relevant to the issues before me. Furthermore, section 64(2) of the Act provides that the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

After considering the evidence before me and on a balance of probabilities, I find that Ms. J.P. does not meet the definition of an individual Landlord under section 49(1) of the Act and for the purpose of ending a tenancy under section 49(3) of the Act. I find that Ms. J.P. is a person, who is a co-owner of a corporation.

Since I have found that Ms. J.P. does not meet the definition of an individual Landlord under section 49(1) of the Act, it is not necessary to determine whether she has a good faith intention to occupy the rental unit.

The Two Month Notice To End Tenancy For Landlord's Use Of Property dated February 27, 2023, is cancelled.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was successful with his application. I authorize the Tenant to deduct the amount of \$100.00 from one future rent payment.

The tenancy will continue until ended in accordance with the Act.

Conclusion

I find that Ms. J.P. does not meet the definition of an individual Landlord under section 49(1) of the Act and for the purpose of ending a tenancy under section 49(3) of the Act.

The Tenant's application to cancel the Two Month Notice To End Tenancy For Landlord's Use Of Property dated February 27, 2023, is successful. The Two Month Notice is cancelled.

The tenancy will continue until ended in accordance with the Act.

The Tenant is authorized to deduct \$100.00 from one (1) future 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 *Residential Tenancy Act*.

Dated: April 19, 2023

Residential Tenancy Branch