



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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A matter regarding STARWOOD INVESTMENT GROUP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL FFT

Introduction

The Tenant seeks an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49(8)(a) of the *Residential Tenancy Act* (the "Act"). Further, the Tenant seeks to recover the cost of the application fee under section 72 of the Act.

Issues

1. Is the Tenant entitled to an order cancelling the Notice?
2. Is the Tenant entitled to recover the cost of the application fee?

Evidence and Analysis

In reaching this decision, I have only considered relevant and necessary oral and documentary evidence that helped resolve the issues of the dispute.

The Tenancy

The Tenant and his wife have lived in the rental unit for more than 20 years. Rent is \$6,612.83. There is no written tenancy agreement submitted into evidence, but the Landlord did not dispute these basic facts. (For brevity, "Landlord" refers to either the corporation or its single shareholder.)

The Notice

On January 24, 2023, the Landlord serve the Notice on the Tenant by registered mail. A copy of the Notice was in evidence. On page two of the Notice there were two reasons indicated for why the tenancy was being ended. The first reason was that the rental unit would be occupied by the Landlord or their close family member. This is a valid reason for ending a tenancy under section 49(3) of the Act.

However, the Landlord is a corporation, whereas section 49(3) of the Act requires a landlord to be “an individual.” Therefore, this indicated reason on the Notice is invalid. Simply put, a corporation is not an “individual” for the purposes of the Act.

The second reason indicated is that “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.”

Landlord’s Evidence, Submissions, and Argument

Landlord’s counsel made submissions regarding the fact that the corporate Landlord is wholly owned by one individual (the mother). They own 100% of the voting shares in the corporation. And the mother intends in good faith to have her son occupy the rental unit.

Documentary submissions from the Landlord outlined how it is the mother’s intention to have the son occupy the rental unit because it is close to the son’s work, school, gym, and family. Being closer to these would reduce commuting time for the son. The son went on the record during the hearing confirming that truthfulness of this intention.

Tenant’s Evidence, Submissions, and Argument

The Tenant testified that he disputed the Notice because he was not entirely convinced that it was legitimate. Having reviewed the Landlord’s submissions regarding the son’s intention to move into the rental unit, he questions the legitimacy even more. As an aside, he commented upon his great respect for the Landlord. However, he questions how the rental unit could possibly be suitable for the son.

The rental unit commands high rent and is a four-bedroom 3,400 square foot property. That the son is trying to save up money is also, the Tenant argued, incongruent with the type of rental unit that it is. He asked, why would the Landlord pick the most expensive rental unit in the building? In summary, the Tenant seeks to see significant evidence to support the son’s intentions to, in good faith, occupy the rental unit.

Analysis

In a dispute resolution proceeding before the Residential Tenancy Branch, where a tenant disputes a notice to end a tenancy, the landlord must prove on a balance of probabilities (meaning “more likely than not”) that the notice was issued in compliance with the Act and with law.

In a nutshell, the Tenant questioned whether the Notice was issued for a legitimate reason. (The Tenant referred to the “legitimacy” of the Notice, which may or may not mean good faith.) “Good faith” is a legal term that means a party is acting honestly and without intention to defraud under the law or agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827), the court ruled that a claim of good faith requires honesty of intention and absence of ulterior motives. This means that a landlord must honestly intend to use the rental unit for the stated purpose on the notice to end tenancy.

If a tenant raises the issue of an ulterior motive or purpose for ending the tenancy, the burden is on the landlord to prove that they are acting in good faith (*Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant accuses the landlord of not acting in good faith, the tenant may provide evidence to support their claim.

In this case, while the Tenant questioned the appropriateness of the rental unit for the son to occupy, he did not argue or make submissions that directly attacked the specific issue of good faith. He did not argue that the son is not going to occupy the rental unit. Rather, he raised concern with the son’s intention to save money (the rental unit has high rent), and with the size of the rental unit (3,400 square feet for a single person). He also raised concerns about why the Landlord would put her son into an expensive-to-upkeep property.

While it is not lost on me that the Tenant raises some good questions, I see nothing to call into question the Landlord’s intentions in having her son occupy the rental unit. It can only be assumed that the Landlord will not be charging her son the same rent as it currently being charged. And, while 3,400 square feet is an unusually large floor space for just one person, this alone does not, in my opinion, raise a question of good faith.

Last, the Tenant briefly suggested that the rental unit, or a similar rental unit in the same building, could easily command three times the current rent. He did not, however, expand on this line of argument, and did not suggest that the Landlord intends to find a new tenant and rent for a higher rate.

For these reasons, I find that the Landlord has proven, on a balance of probabilities, that they intend in good faith to have their son occupy the rental unit. As such, I must dismiss the Tenant’s application to cancel the Notice. The Notice is upheld, and the Landlord is granted an order of possession pursuant to section 55(1)(b) of the Act. It should be noted that having reviewed the Notice I find that it complies with section 52 of the Act. A copy of the order of possession is issued with this Decision to the Landlord, who must serve a copy upon the Tenant.

Given the dreadful availability within the rental housing market, particularly in Vancouver where the Tenant lives, and considering the rather non-urgent nature of the son's intentions to be closer to his gym, work, school, and family, I exercise my discretion under section 55(3) of the Act and order that the tenancy end on August 31, 2023. The order of possession shall reflect this date.

Last, I would be remiss if I did not remind the parties that should the son not occupy the rental unit as intended then the Tenant may be entitled to additional compensation under section 51(2) of the Act.

I decline to order that the cost of the application fee be paid by the Landlord. That aspect of the Tenant's application is dismissed.

Conclusion

For the reasons given above, the application is dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 3, 2023

Residential Tenancy Branch