



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT

Introduction

Under section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the tenant's April 4, 2023, application to the Residential Tenancy Branch for:

- (i) compensation because the tenancy was ended as a result of a Two Month Notice to End Tenancy, and the landlord has not used the rental unit for the stated purpose under section 51 of the Act; and
- (ii) authorization to recover the cost of the filing fee under section 72 of the Act.

Issues

- 1. Is the tenant entitled to compensation in the amount of \$26,796.00?
- 2. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began April 1, 2018, and ended on October 16, 2022. Rent was \$2,233.00 due on the first day of the month. There is a copy of the written tenancy agreement in evidence.

The tenant submitted as evidence a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), which had an effective date of November 30, 2022. The reason stated for the Notice was because:

- 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 landlord's agent affirmed that:

- the landlord is a family trust (the Trust).
- there are three directors of the Trust, who are siblings. They are directors LC, WC, and RC.
- there are six beneficiaries of the Trust, who are children of the directors of the Trust. The beneficiaries are:
 - MAC and MEC, who are children of director RC.
 - WM and CM, who are children of director LC.
 - BC and AC, who are children of director WC.
- the rental unit is currently occupied by beneficiary MEC (child of director RC), who moved into the rental unit on December 1, 2022 (one day after the effective date of the Notice).

The tenant affirmed that:

- when the tenant was evicted, the landlord refused to tell the tenant who was moving into the rental unit.
- when the tenant went back to the rental unit to retrieve some mail, the tenant found a letter addressed to someone who was not beneficiary MEC.

Analysis

Section 51(2) of the Act states that if a tenant is given a notice to end tenancy under section 49 of the Act, a landlord or purchaser if applicable, must pay the tenant an amount that is equal to 12 times the monthly rent if:

- steps have not been taken within a reasonable period after the effective date of the notice to accomplish the stated purpose for ending the tenancy; or
- the rental unit is not used for that stated purpose for at least six months' duration.

Section 49 of the Act defines a landlord as follows:

"landlord" means

(a) an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

(b) a family corporation that

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

Section 49 of the Act defines a family corporation as follows:

"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;

Black's Law Dictionary, 2nd Ed. defines a trust as an equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery.

Based on the definition of a trust found in *Black's Law Dictionary*, 2nd Ed., I find that a trust is a relationship between the grantor and the trustee in which the trustee agrees to hold the property for the benefit of the beneficiaries who were chosen by the grantor. The trustee is agreeing to manage the assets as set forth in the trust's terms and distribute them when and how specified in the trust. Accordingly, there are no voting shares in a trust as the trust is just a relationship between the trustee, the grantor, and the beneficiaries. Since there are no voting shares in a trust, I find that the Trust is not a family corporation as defined by section 49 of the Act. I also note that a trust is not included in the definition of a corporation under the Business Corporations Act.

In addition, I do not find that the Trust qualifies as a landlord under section 49 of the Act for the following reasons:

- There are three directors of the Trust. If the directors of the Trust are the holders of the reversionary interest, each of the directors would only hold 1/3 of the full reversionary interest, which falls below the required threshold of holding not less than 1/2 of the full reversionary interest.
- There are six beneficiaries of the Trust. If the beneficiaries are the holders of the reversionary interest, each of the beneficiaries would only hold 1/6 of the full reversionary interest, which falls below the required threshold of holding not less than 1/2 of the full reversionary interest.
- Since only beneficiary MEC (child of director RC) moved into the rental unit, at most beneficiary MEC and director RC can only claim to hold 1/3 of the full reversionary interest. Thus, neither the director RC nor the beneficiary MEC could be considered a landlord under section 49 of the Act, as neither holds the 1/2 reversionary interest.

The reason provided by the landlord for the Notice was 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. Based on the above findings that the Trust qualifies neither as a family corporation nor as a landlord under section 49 of the Act, I find on a balance of probabilities that the landlord has failed to show the landlord has accomplished the stated purpose for ending the tenancy.

Therefore, I find the tenant is entitled to a Monetary Order for compensation for the landlord failing to accomplish the stated purpose on a notice to end tenancy under section 51 of the Act, in the amount of \$26,796.00.

As the tenant was successful in its application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act. In total the tenant is awarded \$26,896.00.

Conclusion

The application is granted. The tenant is awarded a monetary order in the amount of \$26,896.00.

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: July 13, 2023

Residential Tenancy Branch