



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTERN INT. HOLDINGS LTD. c/o RED DOOR MGMT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, FFT

Introduction

A hearing was convened on November 09, 2023 in response to an Application for Dispute Resolution filed by TA and another Application for Dispute Resolution filed by AA and RA, in which they each applied to cancel a Two Month Notice to End Tenancy for a Landlord's Use of Property and to recover the fee for filing the Application for Dispute Resolution.

The two Applications for Dispute Resolution were joined by the Residential Tenancy Branch as they relate to the same residential property and the same primary issues.

The hearing on November 09, 2023 was adjourned as there was insufficient time to address the matter in the time scheduled for the hearing. The hearing was reconvened on December 05, 2023 and was concluded on that date.

Documentary evidence was submitted that shows TA's Dispute Resolution Package was served to the landlord, via registered mail, on August 11, 2023. Documentary evidence was submitted that shows the second Dispute Resolution Package was served to the landlord, via registered mail, on August 17, 2023. OS stated that these documents were forwarded to him by his property manager. On the basis of this evidence, I find that these documents were served in accordance with section 89 of the *Residential Tenancy Act* (Act).

On August 01, 2023 TA submitted evidence to the Residential Tenancy Branch. SJ stated that this evidence was sent to the landlord, via registered mail, on October 20,

2023. OS stated that this evidence was forwarded to him by his property manager. This evidence was therefore accepted as evidence for these proceedings.

On August 02, 2023 and August 16, 2023, AA and RA submitted evidence to the Residential Tenancy Branch. JJ stated that this evidence was sent to the landlord, via registered mail, on October 20, 2023. OS stated that this evidence was forwarded to him by his property manager. This evidence was therefore accepted as evidence for these proceedings.

On October 23, 2023, AA and RA submitted evidence to the Residential Tenancy Branch. JJ stated that this evidence was simply a duplicate of evidence that was previously submitted to the Residential Tenancy Branch. I therefore do not need to determine if it should be accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Those present at the first hearing were reminded of their affirmation to tell the truth at the second hearing. On December 05, 2023, those not present at the first hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

On November 09, 2023, the participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should either of the Two Month Notices to End Tenancy for Landlord's Use of Property be set aside?

Background and Evidence

All parties agree that these two tenancies began in 2012 and that rent is due by the first day of each month.

All parties agree that the landlord served each tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, by registered mail, in July of 2023. SJ stated that the Two Month Notice to End Tenancy for Landlord's Use of Property was received by TA on July 23, 2023. JJ stated that the Two Month Notice to End Tenancy for Landlord's Use of Property that was received by AA and RA on July 20, 2023.

Both Applications for Dispute Resolution were filed within 15 days of receiving the Two Month Notice to End Tenancy for Landlord's Use of Property.

Both Two Month Notice to End Tenancy for Landlord's Use of Property declare that the rental unit must be vacated by October 31, 2023 and that the tenancy is ending because the unit(s) will be occupied by the child of the landlord or the landlord's spouse.

The parties agree that this is a residential property with one upper three-bedroom suite and one lower three-bedroom suite.

OS stated that he is the sole owner of the company that owns this residential complex and this his daughter intends to move into both suites in the unit.

JJ submits that the Two Month Notice to End Tenancy for Landlord's Use of Property should be set aside because it does not declare 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. JJ submits that since this is the true reason for ending the tenancy, it should have been cited on the Two Month Notice to End Tenancy for Landlord's Use of Property.

OS stated that he is the sole owner of the company that owns this residential complex. OS stated that he did not submit any documentary evidence to support his submission that he is the sole owner of the company because he was not "requested" to do so. He repeatedly stated that he believed the only issue to be determined at the proceedings was whether his daughter intended to move into the residential complex.

JJ submits that OS has failed to meet his burden of proving that he is the sole owner of the residential complex and that he has an obligation to submit documentary evidence to support his assertion that he is the sole owner. JJ submits that I should draw adverse inference from the fact OS has submitted no evidence to establish he is the sole owner.

AA and RA submitted documentary evidence to show the landlord owns many properties. JJ submits that it is irrational to conclude that one person owns a company that owns this many properties.

OS stated that the Two Month Notice to End Tenancy for Landlord's Use of Property was served because his daughter intends to move into the rental unit.

SS stated that:

- She is the landlord's daughter;
- She currently lives with her father;
- She intends to live in the residential complex;
- She works in the movie industry and will use some of the complex for employment purposes;

The tenants had no questions for the witness.

RA stated that there are several areas on the residential property that require repair/maintenance, including:

- Holes in the ceiling that were cut to repair a water leak;
- A moldy sink cabinet;
- Mold in the area of the bathtub;
- Only one burner on the stove is working;
- Exterior stairs need repair; and
- The eavestroughs need cleaning.

OS stated that he has made repairs as they have been presented to him and that he will continue to do so.

RA stated that:

- The tenants have a garden in the rear of the property;
- In August of 2022 a previous property manager told them to clean up the garden area or they would be evicted;
- After being first asked to clean up the garden area, they tidied the garden and mowed the lawn;
- In 2023 the same previous property manager told her that the landlord was unhappy with the condition of the garden and advised her that she would be evicted if it was not tidied;

- On May 11, 2023 she sent the previous property manager a photograph of the garden area; and
- On May 11, 2023, OS sent the previous property manager an email, which was submitted as evidence.

SJ stated that:

- In August of 2021, the former property manager told her that the landlord has declared that the tenant would be evicted if the yard was not cleaned up;
- In August of 2022, the former property manager told her that the landlord has declared that the tenant would be evicted if the yard was not cleaned up;
- On May 04, 2023, the former property manager told her that the landlord has declared that the tenant would be evicted if the yard was not cleaned up; and
- On May 08, 2023, the former property manager told her that the landlord has declared that the tenant would be evicted if the yard was not cleaned up.

OS acknowledged that he had told the previous property manager that he was not pleased with the condition of the yard, although he does not recall the dates of those conversations. He declared that he never told his previous property manager that the tenants would be evicted if the yard was not cleaned.

JJ stated that the email of May 11, 2023 was provided to the tenant by the former property manager, who received the email from OS.

In the May 11, 2023 email, OS wrote, in part, “the property is ruined”. OS stated that he meant the property was ruined due to the condition of the yard.

In the May 11, 2023 email, OS declared that the property would not be cleaned up and if it was not, he “have a family member who will take over the entire house then”.

JJ submits that the email of May 11, 2023 demonstrate that the landlord acted in bad faith when he served the Two Month Notice to End Tenancy for Landlord's Use of Property, and that the true reason for ending the tenancy was that he was unhappy with the condition of the yard.

JJ submits that the decision to serve the Two Month Notice to End Tenancy for Landlord's Use of Property flowed, at least in part, from the former property manager telling OS that he could not end the tenancy as a result of the yard.

OS declared that he was acting in good faith when he served the Two Month Notice to End Tenancy for Landlord's Use of Property and that he is ending the tenancy in accordance with the legislation.

OS submits that the comments he made in the email of May 11, 2023 cannot be connected to his daughter's decision to move into the unit: that it was not a "cause and effect". He stated that his daughter decided to move into the unit months after he wrote the email in May of 2023.

SJ stated that the rent is currently \$2,020.00 and the previous property manager told her on several occasions that the rent is too low. OS stated that he does not know what the rent is and he does not know if the previous property manager told SJ that the rent is too low.

Analysis

Section 49(3) of the Act permits a landlord who is an individual to a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(4) of the Act permits a landlord that is a family corporation to end a tenancy 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.

It is clear that the landlord wishes to end this tenancy pursuant to section 49(4) of the Act, rather than section 49(3) of the Act.

Section 49(7) of the Act stipulates that a Two Month Notice to End Tenancy for Landlord's Use of Property served pursuant to section 49 of the Act must comply with section 52 of the Act. Section 52(d) of the Act stipulates that a Two Month Notice to End Tenancy for Landlord's Use of Property must declare the reason for ending the tenancy.

On the basis of the undisputed evidence, I find that the landlord served each tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declared that they must vacate their unit by October 31, 2023.

Both Notices to End Tenancy declare that the tenancy is ending because "The rental unit will be occupied by the landlord or the landlord's or the landlord's close family

member (parent, spouse or child: or the parent or child of that individual's spouse)". There is a place on the Two Month Notice to End Tenancy for Landlord's Use of Property that declares the tenancy will end 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".

As the landlord alleges that the landlord is a family corporation, it is clear that the Two Month Notice to End Tenancy for Landlord's Use of Property should declare that the tenancy is ending 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".

I find that the Two Month Notice to End Tenancy for Landlord's Use of Property is a flawed form. I find that it does not clearly differentiate between the aforementioned two reasons for ending the tenancy. In my view, the Notice should declare that "The landlord is an individual and the rental unit will be occupied by the landlord or the landlord's or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse)".

I find it would be unreasonable to set aside this Two Month Notice to End Tenancy for Landlord's Use of Property solely because the landlord selected the incorrect reason for ending the tenancy on the Notice. I find the landlord may have selected the incorrect reason for ending the tenancy because the form is flawed, and it does not clearly establish that the landlord ending the tenancy is an individual. I find it unfair to the landlord to set aside this Notice to End Tenancy because a Notice to End Tenancy created by the Residential Tenancy Branch is unclear.

I find that the tenants knew, or should have known, that the landlord was not an individual, as the landlord named on the Two Month Notice to End Tenancy for Landlord's Use of Property is a business entity. I do not find that the Two Month Notice to End Tenancy for Landlord's Use of Property is intended to mislead the tenants and I am satisfied that it is not unfair to the tenants to conclude that this served as notice that the landlord intends to end the tenancy pursuant to section 49(4) of the Act.

Section 49 of the Act stipulates that a family corporation is a corporation in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's siblings or close family members.

On the basis of the OS's testimony, I find that OS is the sole owner of the company that owns the rental unit. I find that his testimony in this regard was consistent and forthright, and I can find no reason to discount it. I therefore find that the residential property is owned by a family corporation.

I respectfully disagree with the tenant's submission that I should draw an adverse inference from the fact OS submitted no documentary evidence to establish he is the sole owner. Adverse inference is based upon the presumption that the party who controls the evidence would have produced it if it had been supportive.

I find, on the balance of probabilities, that OS failed to submit documentary evidence to establish that he is the sole owner of the company that owns the property because he simply did not know that information was needed. I cannot conclude that he did not provide the evidence because he did not believe it would be "supportive".

In concluding that OS did not submit the documentary evidence because he did not know it was needed, I was influenced, in part, by his testimony that he did not submit this evidence because he was not "requested" to do so. I find that this response is indicative of an individual who is simply unfamiliar with the dispute resolution process, rather than an individual who is attempting to mislead.

In concluding that OS did not submit the documentary evidence because he did not know it was needed, I was influenced, in part, by his repeated testimony that he believed the only issue to be determined at the proceedings was whether his daughter intended to move into the residential complex. I find that this testimony is indicative of an individual who unfamiliar with the legal issues to be determined in a dispute of this nature, rather than an individual who is attempting to mislead.

I have placed little weight on the documentary evidence that shows OS's company owns many properties. I do not concur with the submission that it is irrational to conclude that one person owns a company that owns many properties. Rather, I find it unreasonable to conclude that a single individual cannot own many properties, even if those properties are worth millions of dollars.

On the basis of SS's testimony, I find that she is the daughter OS, who is the sole owner of the company that owns the residential property and that she intends to move into both rental units on the property.

I find, however, that the landlord has failed to establish that the Two Month Notice to End Tenancy for Landlord's Use of Property was served in good faith.

Rule 2A of the Residential Tenancy Branch Policy Guideline, with which I concur reads, in part:

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. (Emphasis added)

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. (Emphasis added)

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case. If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

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.

In concluding that this Two Month Notice to End Tenancy for Landlord's Use of Property was not served in good faith, I was influenced by the undisputed evidence that the landlord was concerned about the condition of the yard of the rental unit and that he had expressed his concerns to the former property manager on more than one occasion.

I find the mail which OS sent to a previous property manager, dated May 11, 2023, strongly suggests that the landlord is ending this tenancy because the yard has not been maintained to his satisfaction. In that email OS writes:

Who is going to clean it up

*I never provided it this way
It appears this is not going to happen
If so
I have a family member who will take over the entire house then
Seems harsh
But my property is ruined
You have done a poor job
I will suggest a new property manager
This is beyond acceptable
To accept this level of negligence
I never provided it this way
And it seems you want me to accept it
You never visited the property either
Until I said something
You have allowed this to happen*

In my view, the email written by OS directly connects the failure to clean up the property with his decision to have a family member “take over the entire house”. In the absence of a reasonable explanation for these comments from OS, I find it reasonable to conclude that the landlord is ending this tenancy, pursuant to section 49 of the Act, because the landlord is dissatisfied with the condition of the yard. I find that the Two Month Notice to End Tenancy for Landlord's Use of Property was served for the ulterior motive of resolving the landlord's concerns about the condition of the yard.

I respectfully disagree with OS's submission that the comments he made in the email of May 11, 2023 cannot be connected to his daughter's decision to move into the unit: that it was not a “cause and effect”. Rather, I find they strongly support a conclusion that the landlord decided to move a family member into the complex because the yard was not being maintained.

The email was written on May 11, 2023 and the Two Month Notices to End Tenancy for Landlord's Use of Property were served in July of 2023. I find the proximity between those two events supports a conclusion that they are connected.

I have considered the email of May 12, 2023, which was submitted in evidence. In this email the former manager informs OS that she does not believe the tenancy can end on the basis of the condition of the yard. Although this email is by no means definitive, the

information suggests that the landlord may have resorted to an alternate means of ending the tenancy.

As the landlord has failed to establish that the Two Month Notice to End Tenancy for Landlord's Use of Property which was served to RA and AA was served in good faith, I grant their application to set aside this Notice. Their tenancy will continue until it is ended in accordance with the Act.

As the landlord has failed to establish that the Two Month Notice to End Tenancy for Landlord's Use of Property which was served to TA was served in good faith, I grant the application to set aside that Notice. TA's tenancy will continue until it is ended in accordance with the Act.

I find that the TA's Application for Dispute Resolution has merit and that TA is entitled to recover the filing fee paid to file an Application for Dispute Resolution. At the hearing SJ stated that the TA would prefer to be given authority to reduce one monthly rent payment by \$100.00, rather than being awarded a monetary Order. Pursuant to section 72 of the Act, I hereby authorize TA to reduce one monthly rent payment as compensation for this fee.

I find that the AA's and RA's Application for Dispute Resolution has merit and that they are entitled to recover the filing fee paid to file an Application for Dispute Resolution. At the hearing RA stated that she would prefer to be given authority to reduce one monthly rent payment by \$100.00, rather than being awarded a monetary Order. Pursuant to section 72 of the Act, I hereby authorize AA and RA to reduce one monthly rent payment as compensation for this fee.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use of Property which was served to RA and AA is set aside this Notice. Their tenancy will continue until it is ended in accordance with the Act.

The Two Month Notice to End Tenancy for Landlord's Use of Property which was served to TA is set aside that Notice. TA's tenancy will continue until it is ended in accordance with the Act.

Each tenant has the right to withhold \$100.00 from one rent payment in compensation for the cost of filing their Application for Dispute Resolution.

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: December 06, 2023

Residential Tenancy Branch