



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1006234 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenants' Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Notices to End Tenancy for Landlord's Use of Property (the Notices), under section 49 of the Act
- authorization to recover the filing fees under section 72 of the Act

Tenants AB and KS, respondents SJ and HP and agent AK attended the hearing. SJ and HP represent the respondent numbered company 1006234 BC Ltd (the company). The parties' witnesses also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Service of the notice of hearing and the evidence (the Proceeding Packages)

The parties each confirmed receipt of the Proceeding Packages and that they had enough time to review them.

Based on the testimonies, I find that each party was served with the Proceeding Packages in accordance with section 89(1) of the Act.

Joined applications

Tenant AB (applicant in file number *****333, submitted on July 24, 2024) rents the basement rental unit (the basement unit) and tenant KS (applicant in file number *****860, submitted on July 26) rents the main floor rental unit (the main unit). Both units are in the same rental property.

Rule of Procedure 2.10 states:

Applications for Dispute Resolution may be joined and dealt with under the same

dispute resolution proceeding so that the dispute resolution proceeding will be fair, efficient, and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:

- a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

Both applications were joined in accordance with Rule of Procedure 2.10, as they pertain to the same rental property, name the same landlord, seek similar remedies and relate to similar facts.

Issues to be Decided

Should the Notices be cancelled? If not, is the Landlord entitled to Orders of Possession?

Are the Tenants entitled to recover the filing fees?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

All the parties agreed:

- The tenants are currently occupying their rental units;
- SJ served and tenant AB received the Notice dated July 11, 2024 on the notice's date for the basement unit;
- SJ served and tenant KS received the Notice dated July 11, 2024 on the notice's date for the main unit;
- The rental property contains the basement unit, main unit and a tenanted laneway unit.
- There are about 5 steps to enter the basement unit, which has no steps inside it and about 10 steps to enter the bedroom located in the laneway unit.

The respondents submitted into evidence both Notices. They indicate landlord SJ intends to occupy both units and the effective dates are September 30, 2024. Both Notices also include a form RTB26, schedule of parties, indicating the landlords are also HP and the company.

SJ affirmed that she served both Notices because she intends to occupy the main unit with her partner and because her elderly father will occupy the basement unit.

SJ stated that the Notice addressed to AB mistakenly indicates that SJ plans to occupy the basement unit, as this unit will be occupied by her father.

AB's tenancy agreement dated January 31, 2018 indicates the landlords are HP and the company. KS' tenancy agreement dated May 4, 2019 indicates the landlords are HP, SJ and the company.

SJ testified the rental property is entirely owned by the company, which is owned 50% by SJ and 50% by her aunt HP.

AK said that SJ and HP are the landlords and SJ will occupy the units, not the company and that either SJ or HP could be named landlords, as they jointly own the company.

SJ affirmed that she considers the company co-owns the property with herself and HP and that the company is in good standing.

SJ stated that she currently lives in Surrey, on July 8, 2024 she accepted a job offer for a company located in Vancouver. SJ's current house is located 40 kilometres from her new workplace (approximately a 45-minute commute without traffic), and the property is only 5 kilometres from the new workplace (approximately a 10-minute commute without traffic).

SJ submitted a letter dated September 3, 2024 into evidence (the letter). It states SJ accepted a job and her start date is October 14, 2024. SJ's new workplace address is recorded on the cover page of this decision.

KS testified the letter does not indicate that SJ accepted the offer on July 8 and she does not believe SJ's testimony about this date, as SJ has changed the reason to terminate the tenancy three times.

SJ said that she is the primary caregiver of her elderly father and he's currently living between her house in Surrey and her sister's house. SJ affirmed that when her father is in her sister's house he uses her niece's bedroom and that her niece needs to have her bedroom, as she is in 12th grade. SJ stated that she takes her father to all his medical appointments and that he needs to live close to her.

SJ testified that she changed the property's insurance to owners occupied effective October 1, 2024, she had a good relationship with both tenants, she did not have disputes with the tenants, did not serve a prior notice to end tenancy and did not ask for illegal rent increases.

AB said the respondents are trying to terminate her tenancy because her rent is below the current market rate and because of the dispute between the respondents and tenant KS. AB affirmed there are minor scratches on a fence but pets other than her pet may have done these damages.

KS stated that the respondents threatened to terminate her tenancy because of occupants in her unit and submitted an email from SJ dated June 17, 2024: "We require these unauthorized occupants to permanently vacate the rental unit by no later than July 15, 2024. Should they remain in occupancy after that date you will leave us with no choice but to end your tenancy."

On July 4, 2024 SJ emailed KS: "Other than your breach we have not had any disputes or disagreements with you and we have always been fair landlords. We would like to come up with an amicable solution with you. If we are unable to come to an agreement, we will pursue an eviction."

SJ clarified that she did not serve a prior notice to end tenancy and does not have disputes at the Residential Tenancy Branch, but she had an argument with KS about the occupants of the main unit.

KS testified that SJ asked to increase the monthly rent from \$2,678.84 to \$3,000.00. SJ denied this fact.

Analysis

Section 49(8)(a) allows tenants to dispute a notice to end tenancy issued under section 49 of the Act within 15 days after the date the tenant received it.

As the tenants confirmed receipt of the Notices on July 11, 2024 and submitted the applications by July 26, 2024, I find the tenants disputed the Notices within the timeframe of section 49(8)(a) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the Notices are valid.

Section 1 of the Act defines landlord as:

"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 of the Act defines close family members:

"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 accept the uncontested testimony that SJ and HP are aunt and niece. SJ and HP are not close family members per section 49 of the Act, as they are aunt and niece.

Section 49 of the Act provides a specific definition of landlord and defines family corporation for the context of section 49 of the Act:

"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 siblings or close family members;

"landlord" means

- (a) for the purposes of subsection (3), 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) for the purposes of subsection (4), 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;

The more restrictive definition of landlord under section 49 of the Act applies to this situation, rather than the more ample definition of section 1, as the Notices were issued under section 49 of the Act.

Based on SJ's convincing testimony, I find the company is owned 50% by SJ and 50% by SJ's aunt HP and that the rental property is entirely owned by the company. Thus, the company is not a family corporation, as the voting shares are owed by SJ and her aunt HP, and this does not meet the definition of family corporation in section 49 of the Act.

Furthermore, I note that both tenancy agreements mention the company is a landlord and the Notices' schedules also list the company as a landlord.

Section 49(4) of the Act specifically indicates that only family corporation landlords can issue a notice to end tenancy under section 49 of the Act: "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."

The fact that the tenancy agreements and the Notices list SJ and HP are landlords, besides the company, does not change the fact that the legal owner of the property is the company, which is represented by SJ and HP.

In summary, the company cannot issue a notice to end tenancy under section 49 for 2 reasons:

1. The company is the legal owner of the rental property where both rental units are located.
2. the company is not a family corporation for the purpose of section 49, as SJ and HP, owners of the company, are not close family members, as defined in section 49.

The Act does not require that a corporation landlord be a large corporation for the restriction of section 49 to apply. All the corporations that are not a family corporation under section 49 of the Act are not allowed to issue notices to end tenancy under section 49 of the Act.

Thus, I cancel both Two Month Notices. The tenancies continue as is.

I am not making findings about the alleged reasons from SJ to move to the units, as I cancelled them for the above reasons.

As the tenants were successful in their applications, I find that the tenants are entitled to recover the \$100.00 filing fees paid.

Conclusion

The Notices are cancelled and of no force or effect. The tenancies will continue in accordance with the Act.

Pursuant to section 72(2)(a), tenants AB and KS are each authorized to deduct \$100.00 from their next rent payment to recover the filing fees.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 07, 2024

Residential Tenancy Branch