Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"), pursuant to s. 49 of the Act; and

- authorization to recover the filing fee for this application pursuant to s. 72.

The individual landlord named in this application, EC, and two other individual landlords, JC and MK, the tenant, and the tenant's advocate attended the hearing and were each given an opportunity to be heard, to present their affirmed testimony, to make submissions and to call witnesses. RR and MM, both prior tenants in the building, testified as witnesses on behalf of the tenant. Both parties had an opportunity to ask questions of the witnesses.

The 2 Month Notice was signed by EC but was not dated. Section 52 requires that a notice to end tenancy be signed and dated. However, s. 68 allows me to amend a non-compliant notice where the person receiving it knew or should have known the information that was omitted from the notice and it is reasonable to amend in the circumstances. As the 2 Month Notice at issue came under cover of a letter dated September 30, 2016 from EC on behalf of "The Management" of 2224 Alberta St. Holdings Inc., I hereby amend the 2 Month Notice to include the date of September 30, 2016.

Although the landlords did not provide written proof of service on the 2 Month Notice or by way of a Proof of Service form, one of the landlords testified that the 2 Month Notice was posted on the tenant's rental unit door on September 30, 2016. The tenant stated

that she received the 2 Month Notice on October 1 or 2, 2016, when she returned to the rental unit after a time away. The tenant's application to dispute the 2 Month Notice indicates she received it on October 2, 2016. In accordance with sections 88 of the Act, I find that that the tenant was duly served with the 2 Month Notice on October 2, 2016.

The tenant filed her application for dispute resolution challenging the 2 Month Notice on October 10, 2016. The three individual landlords confirmed receipt of the application, the Notice of Hearing, and the tenant's evidence. The landlords did not file or serve documentary evidence.

At the outset of the hearing, JC asked the tenant how many occupants were residing in the rental unit. She felt that this was necessary information in the event of an emergency. I directed the landlords to inquire with the tenant separately about that as it was not relevant to the matter before me.

Issues

Should the 2 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

No written tenancy agreement was submitted in evidence. The tenant testified that this is a month to month tenancy and that it began on February 1, 2012. Monthly rent in the current amount of $874.00 is payable on the first day each month.

The individual landlords issued the 2 Month Notice, with an effective move-out date of December 31, 2016, for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The tenant alleges that the landlords did not issue the 2 Month Notice in good faith. She asserts that the fact the landlords have evicted four other long term tenants since purchasing the building this year suggests that their intention is to raise the rents and make more money. The tenant provided copies of the following materials:

- A 2 Month Notice to End Tenancy for Landlord's Use of Property to tenant MM dated May 19, 2015 with an effective date of August 1, 2016 indicating that the unit will be occupied by the landlord or a close family member, and a cover letter to the same effect;

- A 2 Month Notice to End Tenancy for Landlord's Use of Property to tenant RR dated May 30, 2015 with an effective date of August 1, 2016 indicating that the unit will be occupied by the landlord or a close family member;

- A 2 Month Notice to End Tenancy for Landlord's Use of Property to tenant GSD dated May 19, 2015 with an effective date of August 1, 2016 indicating the unit will be converted for use by a caretaker, and a cover letter to the same effect; and

- A 1 Month Notice to End Tenancy for Cause to tenant RS dated May 19, 2015 with an effective date of August 1, 2016. Although the reproduction of this 1 Month Notice is unclear and the "cause" alleged by the landlord cannot be made out, the landlord's cover letter to RS simply says "we require the use of your suite."

One of the individual landlords, JC, testified that the three individual landlords together and their offspring are a family partnership, and that they operate a store-front business close to the building in which the rental unit at issue is located. She further stated that they are also involved in the business of historic restorations, that they bought the 12 unit building in March, 2016, and that it is at this stage "derelict" and requires substantial repair and restoration.

She also testified that the 2 Month Notice under consideration was given because her daughter, MC, who works at the family business located near the building, will be moving in. Another of the individual landlords, MK, testified that they bought the building in order to house their children in light of the barriers to housing in Vancouver and that collectively the individual landlords have five children.

The tenant submitted that the fact that the landlords are in the business of heritage restoration supports the tenant's submission that the landlords' objective is not to house their children but to renovate the building and charge substantially higher rents to the public at large.

The tenant also gave affirmed testimony that GSD's former unit, which GDS had been required to vacate by a 2 Month Notice indicating that the landlords intended to convert the unit for a caretaker, does not appear to be occupied by a caretaker. In fact, the tenant says, she has met the occupant of that unit, and he identified himself as a friend of the landlords. She further says that she has not received the contact number for the occupant of that suite as a person to contact in the event that caretaking of the building is required. In response, JC says that that it is the male tenant's female partner who is the caretaker and that she is in the employ of the landlords, who will contact her if they are contacted by a tenant requiring assistance.

The tenant's witness, RR, testified that she lived in the same rental building and left on August 1, 2016 after receiving a 2 Month Notice for Landlord's Use of Property. She testified that she lived next door to the applicant tenant, and that she has been advised by friends who still live in the building that no one is living in that unit. The landlord JC says this is simply not true, and that her son, MC, is living there. The tenant in this case agrees with RR and states that no one seems to be living in that unit.

Another witness for the tenant, MM, testified that she vacated her unit in the same building in August after receiving a 2 Month Notice for Landlord's Use of Property. She also testified that the tenants who have received notice since the landlords acquired the building have all been long term tenants, such that it appears the landlords are targeting tenants who pay lower rent for eviction. MM also stated that she understands that her former unit is now occupied. One of the individual landlords, JC, testified that it is her daughter, LC, who is residing in that unit.

MM also testified about DS's eviction for cause. She said that DS was evicted on the basis that there had been extraordinary damage to the unit caused by the tenant, but that she had inquired with the City and no permits have been issued for the building since the landlords acquired it. One of the landlords in response stated that the repairs in DS's unit were emergency repairs such that permits were not required.

Analysis

Although there was a substantial amount of documentary and oral evidence from the tenant before me, I refer to only the relevant facts and issues in this decision.

According to subsection 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on October 2, 2016 and

filed her Application on October 10, 2016. Accordingly, she is within the 15 day time limit under the Act.

Subsection 49(3) of the Act provides that a landlord who is an individual may 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.

Subsection 49(4) provides that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shared in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

In the case before me, the onus is on the landlord to justify, on a balance of probabilities, the basis of this 2 Month Notice. The Notice of Hearing, received by the landlords, states as follows: "Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing." The Notice of Hearing also includes the link to the Rules of Procedure. Rule 3 of the Rules of Procedure deals with evidence generally, and Rule 7.18 states that the respondent landlord bears the onus of proof where a tenant applies to set aside a notice to end tenancy.

Additionally, the tenant alleges that the landlords did not issue the 2 Month Notice in good faith. In support of her submission she has established that she is the fifth tenant who has received notice since the landlords purchased the building and she has provided evidence that calls into question whether the bases upon which some of the other tenants received notice were legitimate, including: (1) evidence that suggests that the unit vacated for caretaker's use may not be occupied by a caretaker; (2) evidence that RR's former unit may not be occupied at all (whereas the landlords say it is occupied by a close family member); and (3) evidence that the cover letter to the tenant evicted for cause stated only that the landlords require use of the unit. In the tenant's submission the landlords are engaging in a pattern of evictions in the building that suggests, with respect to the unit here at issue, that they may be attempting to substantially raise the rent, perhaps after renovating, and not simply to house another close family member.

As per the Residential Tenancy Policy Guideline 2 ("Good Faith Requirement When Ending a Tenancy"), where the good faith intent of the landlords is called into question, the burden is on the landlords to establish that they truly intend to do what they said on the Notice to End Tenancy.

The individual landlords JC and EC have given affirmed testimony that they intend to have another of their daughters move into the rental unit at issue. MK has confirmed this testimony. However, the landlords have not put forward any documentary evidence in support of their position. Nor have they called their daughter as a witness. As a result there is insufficient evidence to allow me to conclude that the landlords intend in good faith only to house EC and JC's daughter.

Although the landlords received the tenant's evidence in advance and were aware of what the tenant would be alleging, they did not produce any documentary evidence to show that the tenant's allegations with respect to the four other units are incorrect. EC and JC did not produce their son, MC, or their daughter, LC, both of whom they say are already residing in the building. They did not produce their employee, whom they say was brought into one of the units as a caretaker. They did not produce documentation establishing that MC or LC live in the building (for instance, mail addressed to their children at that address) or documentation evidencing their employment of the caretaker. These are only examples of the type of evidence that could have been provided.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their burden of proof to show that they, in good faith, intend to have a close family member occupy the rental unit at issue.

It also appears that the legal landlord may be a family corporation. If this is so, then s. 48(4) will apply, and the ownership of voting shares in that corporation will also have to be established on the evidence.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, under cover of letter dated September 30, 2016, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the Act.

As the tenant was successful in her Application, she is entitled to recover the $100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The tenant is entitled to recover the $100.00 filing fee from the landlord. I order the tenant to deduct $100.00 from a future rent payment at the rental unit, in order to implement this decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 05, 2016

Residential Tenancy Branch