



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MB&S VENTURES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Employer's Use dated July 26, 2020 ("Two Month Notice"), and to recover the \$100.00 cost of her Application filing fee.

The Tenant and an agent for the Landlord, K.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on August 7, 2020. The Tenant provided a Canada Post tracking number as evidence of service. The Agent confirmed receipt of the Tenant's registered mail package.

However, the Tenant said that she was served with the Landlord's evidence too late, according to the Rules. The Agent testified that he tried (unsuccessfully) to upload his evidentiary submissions to the RTB the day prior to the hearing. He also said he served the Tenant with the Landlord's evidence on the day prior to the hearing. I find that the Landlord's evidence is not before me, as it was not uploaded or served pursuant to the deadline requirements of Rule 3.15, which states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

[emphasis added]

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

In describing the hearing process to the Parties, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord eligible for an order of possession?
- Is the Tenant eligible for recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 1, 2019, with a current monthly rent of \$600.00, due on the fifteenth day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$300.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the Tenant's security deposit.

The Tenant was served with a Two Month Notice by the Landlord on July 27, 2020, by leaving a copy in the mailbox or mail slot at the address where the Tenant resides. The effective vacancy date on the Two Month Notice is September 30, 2020. The grounds for the eviction are that "all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord in writing to give this Notice, because the purchaser or a close family member intends in good faith to occupy the rental unit."

The Tenant has said: "First of all, I do not believe that this is a legal, above board sale. It's their way of breaking my [tenancy] agreement." The Tenant went on to say that she used to work for one of the Agent's partners and that this is a "personal vendetta". She said:

They won't speak to me. I offered to pay more rent. They won't speak to me and they won't do repairs. Then Covid hit. I didn't hear from them. As soon as the Covid thing was lifted, I got a notice three hours later. They miraculously came up with a buyer.

They changed the name of [the company] to [another corporate name]. They have just taken on a partner. When they brought the new owner to the place, all they did was measure where they would put new appliances in the kitchen. They didn't go downstairs, no roof inspection.

They dropped off a form from Revenue Canada saying they have a business number. There are no legal signatures, stamps, no notaries involved. I do not believe this is a legal sale. The possession is on the 3rd of September at 12 noon in one document. The sale completes on September 29, 2020. There is also an email to the lawyer. They joked with the [new corporate] name. He stood in my door laughing at me. I do believe this is fraud.

The Agent said:

Well, let's back up to the beginning. Her two other tenants moved out during the Covid period. There's two parts. She said it's not a legitimate sale. I introduced [her] to the new partner who's buying it. I've had during Covid, had the plumbers in there investigating the toilet rattling. The only other problem was the fridge, and it was just too full in the freezer section. As to how the sale of this house came about, I'm a minority shareholder with [the Landlord corporation]. I have another partnership and six or seven buildings all together. My duties of [the Landlord corporation]: here as the advisor, and my fiduciary duty is to keep the company solvent. Year end: March 30 – our income for this company... we bit off more than we can chew with the house. We still owe over \$200,000.00 on it. We're \$250,000.00 in arrears. We owe.... The writing was on the wall once Covid hit; it wasn't going to remain solvent.

When it came time to sell the house, I contacted my realtor. It's Covid, and I'd like to sell my house. I put it out to all my friends and business associates. I came across Mr. [L.] ("Purchaser"). He lives with his wife, three kids, his mother-in-law,

and her brother. They live in [a nearby town]. They had an accepted offer of it. They kept bumping the moving dates due to a phase two environmental study. He wanted to have a new home. I have a house that I'm selling, so we had the initial agreement. He talked to his wife. We had an hour and a half meeting with the accountant; I got my lawyers involved, and the partners in the company. He gets to use the site for the next two or three years, while he looks to find another property for his family. I started with my lawyer in June; she said you need to submit three [company] names.

I submitted [the Tenant] the papers. She said 'I don't like this; there were no for sale signs'. I introduced her to [the Purchaser], but he was taken aback by her - left scratching his head.

We then received her RTB papers saying that this isn't a real sale. So I got the papers from [the Purchaser] and my lawyer, who was on holidays until the 31st. I said I need to prove this is happening. I picked up the paper work on the 31st, and got my partners to sign it. Had the manager at [our restaurant] sign it as a witness. He knows the parties - had gone to school with [the Purchaser]. I dropped papers to [the Tenant]. The documents show it's not a fly-by-night sale. I think that's about it

The Tenant said:

I'll reiterate, there are no legal signature, no stamps.

I want to say he did bring [the Purchaser] here two weeks ago. They just measured. They told me it would be eight months of renovations. I don't think it takes eight months to renovate a kitchen.

When I asked [the Purchaser] 'will you be moving in?' He said: 'I'll be working on it.' [The Agent] cut him off: '...and then one of his family members will be moving in.' It's not big enough for that many family members. The lady downstairs also works for them. I still think that [the Agent's] name is still on title, last I checked. It doesn't matter how many times . . . isn't he still an owner? That's not changing hands. Just because you've dropped a partner, because [they] are getting a divorce. They just owned the [restaurant] and this house.

The businesses in [this town] are all saying how well they are doing. I offered to pay more money. I do not believe this has been a legal sale. This sale is still

ongoing. Sure they'll clear the title, but then go find financing through [a bank]. The deal has not been completed. As far as the date. No, he doesn't have completion. They have only changed the name.

The Agent said:

It's done and finances are secured. I could probably generate the documents to show that. There will be a slew of documents. Why do I have to submit proof? I have signed documents and lawyers' emails that show this is an ongoing thing. It makes no sense. [The Tenant's] upset because I didn't put a for sale sign up. Nobody came through it. I used photos and we used drive by, because of Covid.

[The Purchaser] is a new business partner and the purchaser of the property. We went because of Covid. I didn't dare to enter homes, so I showed him all the pictures I have. This is only him and his wife and three kids. Not his in laws – they're living in trailers. The place is massive enough; the kids are 4, 7 and 10. They go to school in the valley. The eight months' reference for renovations - he can do this while he's living in the place. There's no intention of putting another tenant in there. I've been doing this for months. I've been doing deals without for sale signs for years. This is my first time doing a tenancy removal. I asked the right questions and every indication from the Tenancy Branch was that this was how it is to be done.

My lawyer bent over backwards to get these documents. My business partner feels horrible this is happening. It's just a business decision to keep [the Landlord corporation] solvent.

[emphasis added]

The Tenant submitted a document that she received with the Two Month Notice, which states:

FORMAL REQUEST LETTER TO LANDLORD FOR EVICTION REQUEST

DATE: July 20, 2020

To: [Agent] [Corporate Landlord]

This is a formal request to have the present landlord give official notice to the existing tenant. I ask that the tenant vacate the property by September 30th, 2020.

[Purchaser's name (but no signature)]

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

A landlord may end a tenancy for the landlord's use, pursuant to section 49 of the Act.

49 (5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser 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.

[emphasis added]

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

Accordingly, I find that the Landlord has the burden of proving the validity of the Two Month Notice on a balance of probabilities.

The Agent referred to a number of documents that his lawyer produced for the sale of the residential property; he also said that he "...could probably generate the documents..."; however, the Agent did not submit any documentary evidence to the RTB, nor serve the Tenant with any evidence on time, therefore, as noted above, this evidence is not before me in this matter to support the Landlord's burden of proof.

The Agent's evidence is that the purpose of selling the residential property was to preserve the solvency of the Landlord corporation. Further, the Tenant's evidence is that when she asked the Purchaser when he would be moving in, he said: "I'll be working on it.", until the Agent finished his sentence with: "...and then one of his family members will be moving in." The Tenant also said that the Purchaser told her that there would be eight months of renovations.

I find it inconsistent with common sense and ordinary human experience that a family with three young children would purchase a new house for their use based on photographs and a drive-by, even during the state of emergency. Further, the Purchaser's limited visit was two weeks prior to the hearing, according to the Tenant; therefore, it was well after the partners had agreed to the sale in their meetings, as described by the Agent. The Agent blamed this on the state of emergency; however, Covid did not stop him from bringing the Purchaser by for a visit in the end. Yet during this visit, the undisputed evidence before me is that the Purchaser did not inspect other areas of the rental unit, but only took measurements in the kitchen.

I also note that the document from the Purchaser asking the Landlord to evict the Tenant, did not say what the purpose of this eviction was, as is required by section 49(5)(c) of the Act, noted above.

Policy Guideline number 2A ("PG #2A") states the following:

Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord:

...

3. enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit.

PG #2A goes on:

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA 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 (s.32(1)).

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 suggest the landlord is not acting in good faith in a present case.

If there are comparable 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 other ulterior motive.

[emphasis added]

Further, PG #2A defines “purchaser” to mean: “a person that has agreed to purchase at least ½ of the full reversionary interest in the rental unit.” There is no evidence before me of what percentage of interest the Purchaser has in the property.

I find that the limited evidence before me from the Purchaser is that he, and/or his corporate partners, including the Agent, intends to renovate the residential property, rather than move in within the next six months. There is a note with the Purchaser’s name on it, but no signature, stating that he wants the current Landlord to give the Tenant an eviction notice. However, this note does not say that the Purchaser intends to

move into the residential property. Further, the Parties did not direct my attention to a copy of a purchase agreement between the Landlord and the Purchaser.

Based on the evidence before me, overall, I find it more likely than not that the Landlord is selling the residential property to resolve for the Landlord corporation's financial problems, which in itself is not relevant. However, the partners of that corporation are also partners in the Purchaser's corporation. This is based on the testimony, since there are no purchase and sale documents before me to consider. I find that the Landlord has not provided sufficient evidence to meet their burden of proof in this matter.

Again, to summarize, I find it is more likely than not that:

- The Purchaser is going to renovate, not inhabit the rental unit, based on:
 - the Purchaser's comments to the Tenant in this regard;
 - the Purchaser's note requesting the eviction without any reason stated;
 - the Purchaser and his wife did not inspect the residential property or thoroughly inspect it before entering into a purchase agreement;
- At least one of the Landlord's directing partners, the Agent, is a party to the Purchaser's corporation;
- There is no evidence before me of how much interest the Purchaser has in the new corporation or in the residential property, itself, pursuant to PG #2A.

After hearing the testimony from the Parties, I find that the Landlord's version of events does not ring true in this situation and are inconsistent with the requirements of section 49 of the Act and PG #2A. Accordingly, I cancel the Two Month Notice. The Tenant is successful in her Application, and as such, I also award her with recovery of her \$100.00 Application filing fee. The Tenant is authorized to deduct \$100.00 from one upcoming rent payment in satisfaction of this award.

Conclusion

The Tenant is successful in her Application to cancel the Two Month Notice, because the Landlord provided insufficient evidence that the Landlord complied with section 49 of the Act and PG #2A.

The Two Month Notice is cancelled and is of no force or effect. The Tenant is also awarded recovery of the \$100.00 Application filing fee, which she is authorized to deduct from one upcoming rent payment in satisfaction of this award.

The tenancy continues until ended in compliance with the Act.

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: September 10, 2020

Residential Tenancy Branch