Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cornerstone Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- cancellation of the landlord's Two Month Notice to End Tenancy ("Two Month Notice") for the Landlord's Use pursuant to section 49
- recovery of the filing fee pursuant to section 72.

Both parties attended the hearing with the landlord appearing by way of agent JM along with PM, a witness. The tenant, BC appeared along with advocates ER and DK.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Preliminary Matter

The agent JM advised that the correct landlord is Stargazer Ventures Ltd. JM holds voting shares in the company and is appearing as agent for the landlord corporation. Rule 4.2 of the Rules of Procedure permit an application to be amended at the hearing where the amendment could be reasonably anticipated. I find based on the landlord's submissions and the evidence before me that the correct landlord is Stargazer Ventures Ltd. and I amend the style of cause accordingly pursuant to section 64(3)(c) of the *Act*.

Service

The tenant confirmed receipt of the Two Month Notice, dated September 20, 2022 with an effective date of November 30, 2022. The landlord advised that the tenant was

served with an evidence package in response to the dispute notice on November 22, 2022 by posting it to her door. Proof of service was uploaded, and I find that the tenant was properly served in accordance with section 88 of the Act.

The landlord confirmed receipt of the dispute notice and the tenant's materials; however they argue that service was not timely under the legislation as they only received the tenant's application and supporting material on October 21, 2022.

The application for dispute resolution was accepted by the RTB on September 22, 2022 and the dispute notice was created on October 17, 2022. The tenant testified that the landlord was served by registered mail sent on October 18, 2022. She provided Canada Post tracking numbers in evidence.

Issue(s) to be Decided

1. Is the Two Month Notice valid and enforceable against the tenant?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced November 1, 2011. Rent is currently $981.00 per month due on the first of the month. The landlord holds a security deposit of $387.50 in trust for the tenant. The tenant still occupies the residence.

The landlord testified that the landlord is a family held corporation and a close family member that wishes to occupy the unit holds shares in the corporation. The tenant provided in evidence the articles of incorporation for the landlord's company, showing that the individual who wishes to occupy the unit, PM, is a director of the company.

The individual PM who wishes to occupy the subject rental unit stated in evidence that he commenced occupying unit #205 on April 1, 2022. This unit is in the same building as the subject rental unit. He further stated that once he moved into the building, he realized that he would prefer a bigger deck, therefore he wished to move into the subject rental unit.

The tenant BC provided an affidavit in evidence from the former tenant of unit #205. The affidavit stated that the former tenant had received a two month notice to end tenancy for landlord's use in November 2021. The notice was signed by PM. The

tenant initially filed an application for dispute resolution but subsequently found other accommodations and withdrew his application. This evidence is not disputed by the landlord.

The tenant alleges that the landlord is not acting in good faith, and that PM doesn't actually live in the building. She has only seen people in unit #205 on one occasion for a party, and she believes that he parks his vehicle at the building permanently. She has never met PM and does not know what he looks like.

The landlord stated that PM lives in the building and has occupied unit #205 since April 1, 2022 as his primary living accommodation. PM moved into unit #205 after serving a Two Month Notice to End Tenancy on the prior tenant of that unit.

Analysis

The landlord argued that the tenant's dispute application was not timely as the landlord was not served until October 21, 2022. I note that section 49 of the Act requires only that the tenant file an application for dispute resolution within 15 days of receipt of the Two Month Notice. The Two Month Notice was received by the tenant on September 20, 2022. The application for dispute resolution was filed on September 22, 2022. The dispute notice was created on October 17, 2022 and was served by registered mail October 18, 2022. I find that service complies with sections 88 and 89 of the Act.

RTB Rules of Procedure 6.6 states, "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." In this case, the landlord has the burden of proving the validity of the Two Month Notice served on the tenant.

Based on the evidence before me, specifically the evidence of PM, I find that the landlord is a family corporation, and an individual holding voting shares in the family corporation intends to occupy the rental unit. The evidence before me is that PM, after serving a Two Month Notice on a different tenant, occupied rental unit #205 in the same building since April 1, 2022. Section 49(4) of the Act states:

> (4)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 Act requires that the landlord establish on a balance of probabilities an intention to occupy the rental unit in good faith.

Section 49(3) of the Act states the following:

> 49(3) 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.

Guidance is given to arbitrators in how to interpret the legislation in Senft v. Society For Christian Care of the Elderly, 2022 BCSC 744:

> [36] In *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, the Supreme Court of Canada confirmed that tribunals must demonstrate an understanding of the proper approach to statutory interpretation:
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> > [121] The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior -- albeit plausible -- merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.
> >
> > [122] It can happen that an administrative decision maker, in interpreting a statutory provision, fails entirely to consider a pertinent aspect of its text, context or purpose. Where such an omission is a minor aspect of the interpretive context, it is not likely to undermine the decision as a whole. It is well established that decision makers are not required "to explicitly address all possible shades of meaning" of a given provision: Construction Labour Relations v. Driver Iron Inc., 2012 SCC 65, [2012] 3 S.C.R. 405, at para. 3. Just like judges, administrative decision makers may find it unnecessary to dwell on each and every signal of statutory intent in their reasons. In many cases, it may be necessary to touch upon

> only the most salient aspects of the text, context or purpose. If, however, it is clear that the administrative decision maker may well, had it considered a key element of a statutory provision's text, context or purpose, have arrived at a different result, its failure to consider that element would be indefensible, and unreasonable in the circumstances. Like other aspects of reasonableness review, omissions are not stand-alone grounds for judicial intervention: the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker.[emphasis added]

[37] Citing the above passage from *Vavilov*, this Court in *Guevara v. Louie*, 2020 BCSC 380 at paras. 54-55, applied this principle in an *RTA* s. 47 notice dispute, and set out that s. 47 requires a finding of "serious misconduct" which affected or could affect the landlord or other occupant:

> [54]… At a minimum, the Arbitrator was required to consider the context and purpose of s. 47 and adopt an interpretation consistent with those factors.
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> [55] Section 47 sets out a number of grounds on which a landlord may rely upon to terminate a tenancy. A review of all of the grounds on which a tenancy may be terminated under s. 47 makes it apparent that the tenant must have engaged in serious misconduct that seriously affected the landlord or the other tenants of the building in which the premises are located, failed to comply with a condition precedent to the rental agreement coming into effect (s. 47(1)(a)) or have taken an unreasonable amount of time to comply with a material term of the tenancy agreement.

[38] The Decision contains no discussion of the context and purpose of s. 47 of the *RTA*. Several decisions of this Court confirm that RTB arbitrators must keep the protective purpose of the *RTA* in mind when construing the meaning of a provision of the *RTA*: *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257 at paras. 11,27; *McLintock v. British Columbia Housing Commission,* 2021 BCSC 1972 at paras. 56-57; *Labrie v. Liu*, 2021 BCSC 2486 at para. 33; *Blaouin v. Stamp*, 2021 BCSC 411 at para. 60.

PM occupied another unit in the building for a period just over eight months, and now wishes to move to the subject unit because he states that he desires a bigger deck. I

find that the reason of PM for wishing to move, a bigger deck does not satisfy the good faith requirement of the legislation. PM is a director of the company that is the landlord of both unit #205 and the unit that is the subject of the Two Month Notice. The landlord has not established a good faith reason why PM wishes to occupy the subject rental unit after choosing to occupy another unit in the building as of April 2022.

I am considering the overall context and purpose of the good faith requirement in section 49 of the Act, which is to protect renters from being evicted in order to allow the landlord to subsequently rent the unit at a higher rent. I interpret the good faith requirement to mean that the landlord has established no ulterior motive to re-rent the unit for a higher rent. I am not satisfied that the landlord intends to occupy the rental unit in good faith. In coming to this conclusion, I have considered all the circumstances including the timing of the two separate Two Month Notices issued to different units within the same building to be occupied by the same person, the reason given for wishing to move (a bigger deck), and the duration of the tenant tenancy.

The tenant's application disputing the Two Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act. As the tenant was successful in her application, she is entitled to recover the filing fee for her application.

Conclusion

The tenant's application disputing the Two Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act. As the tenant was successful in her application, she is entitled to recover the filing fee for her application. The tenant is entitled to deduct $100.00 from a future one month's rent on a one time basis.

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: January 10, 2023

Residential Tenancy Branch