Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STEMWINDER DRVE PROPERTIES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNETC, MNDCT, FFT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for compensation related to being served with a Two Month Notice to End Tenancy for Landlord's Use, for a monetary Order or money owed, and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on September 16, 2022 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receiving these documents.

The male Tenant stated that on September 16, 2022 evidence the Tenant submitted to the Residential Tenancy Branch on August 26, 2022 was sent to the Landlord with the Dispute Resolution Package. The Agent for the Landlord stated that he does not recall if evidence was provided to him with the Dispute Resolution Package.

On the basis of the male Tenant's testimony that evidence was served to the Landlord on September 16, 2022, I find that the Tenant's evidence was served to the Landlord and it was accepted as evidence for these proceedings. I find the male Tenant's testimony was consistent and forthright. I find the Agent for the Landlord's testimony that he does not recall receiving evidence is not sufficient to refute the male Tenant's testimony.

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.

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.

Preliminary Matter

At the hearing the male Tenant stated that the Tenants had applied for the return of the security deposit.

The Agent for the Landlord stated that he was not aware the Tenants had applied to for the return of their security deposit.

The Notice of Dispute Resolution Proceeding, dated September 13, 2022, does not declare that the Tenants are seeking a return of the security deposit. There is no record of the Tenants applying to recover their security deposit or amending their Application for Dispute Resolution to include an application to recover the security deposit.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulates that the "claim" is limited to what is stated in the Application for Dispute Resolution. As the Application for Dispute Resolution does not declare the Tenants are seeking a return of their security deposit and there is insufficient evidence to conclude that the Landlord was informed that the Tenants were seeking a return of the deposit, I am unable to consider that claim at these proceedings.

The Tenants retain the right to file another Application for Dispute Resolution seeking the return or their security deposit.

Issue(s) to be Decided

Are the Tenants entitled to compensation, pursuant to section 51(2) of the *Act,* because steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice?
Are the Tenants entitled to compensation for storage costs?

Background and Evidence

The Agent for the Landlord and the Tenants agree that:

- this tenancy began in 2017;
- it ended on June 30, 2022; and
- the Landlord served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declared that the rental unit must be vacated by July 01, 2022.

The Two Month Notice to End Tenancy for Landlord's Use of Property declares that the tenancy is ending because the unit will be occupied by the Landlord or the Landlord's spouse and 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 in good faith to occupy the unit.

The Agent for the Landlord stated that:

- the shareholders of the company named as the Respondent are the Agent for the Landlord, his wife, his son, and his son's common-law wife;
- when the Two Month Notice to End Tenancy for Landlord's Use of Property was served, the intent was to use the unit as a corporate office for the company and for the shareholders to use it as a secondary residence when they are in the community;
- all of the shareholders live in another province;
- the Landlord spent approximately 3 months renovating the unit before the shareholders began using it as an office/secondary residence;
- since September of 2022, at least one of the shareholders has stayed in the unit for approximately one week per month; and
- the unit is used for quarterly company meetings.

The female Tenant stated that people who live in the residential complex have told her that they have seen people entering the unit on "rare" occasions and these people have told her that nobody is "living" there.

The Tenants submit that they left TELUS equipment in the rental unit and that when they contacted the strata management company to recover the equipment, they were told there was nobody in the unit. The Agent for the Landlord stated that there is no TELUS equipment in the unit.

The Tenants are seeking compensation for the cost of renting a storage container. The male Tenant stated that they needed to rent the storage container because they had to move with limited notice and they needed to store some items. He acknowledged that they did not dispute the Two Month Notice to End Tenancy for Landlord's Use of Property which required them to vacate the unit on July 01, 2022.

Analysis

On the basis of the undisputed evidence, I find that the Tenants were served with a Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*, which required them to vacate the rental unit by July 01, 2022.

On the basis of the undisputed evidence, I find that the Tenants did not dispute the Two Month Notice to End Tenancy for Landlord's Use of Property and that they vacated the unit on the basis of that Notice to End Tenancy.

On the basis of the Two Month Notice to End Tenancy for Landlord's Use of Property, I find that the Notice to End Tenancy declared that the tenancy was ending because the unit will be occupied by the Landlord or the Landlord's spouse and 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 in good faith to occupy the unit.

The *Residential Tenancy Act (Act*) defines a "family corporation" as a corporation in which all the voting shares are owned by one individual, or one individual plus one or more of that individual's brother, sister, or close family members. The *Act* defines a "close family member" in relation to an individual as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

On the basis of the undisputed evidence, I find that the Agent for the Landlord, his wife, his son, and his son's common-law wife are the only four individuals who have voting shares in the company which owns the rental unit. As such, I find that the company which owns the rental unit meets the definition of family corporation.

As the rental unit is owned by a family corporation, I find that the family corporation has the right to end this tenancy pursuant to section 49(4) of the *Act*, which authorizes a landlord that is a family corporation to 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 Two Month Notice to End Tenancy for Landlord's Use of Property declares that the tenancy is also ending pursuant to section 49(1) of the *Act*, which authorizes a landlord who is an individual to 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. As the Landlord is not an individual, the Landlord did not have the right to end the tenancy pursuant to section 49(1) of the *Act*.

Residential Tenancy Branch Policy Guideline 2A reads, in part:

The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

…

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room. A landlord cannot reclaim the rental unit and then reconfigure the space to rent out a separate, private portion of it. In general, the entirety of the reclaimed rental unit is to be occupied by the landlord or close family member for at least 6 months.

…

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under section 49 of the RTA and that they used the rental unit for its stated purpose for at least 6 months.

There is nothing in the legislation or Residential Tenancy Branch policy that suggests a person owning voting shares in the corporation, or a close family member of that person, must occupy the rental unit as their primary residence. I therefore find that a person owning voting shares in the corporation, or a close family member of that person, has the right to end a tenancy, pursuant to section 49(4) of the *Act*, even if they only intend to use the unit as a secondary accommodation.

On the basis of the testimony of the Agent for the Landlord, I find that a person owning voting shares in the corporation, or a close family member of that person, has

periodically lived in this rental unit, as a secondary accommodation, since September of 2022. On the basis of this testimony, I find that the rental unit was renovated prior to those individuals occupying the unit, and that the renovations took approximately 3 months.

Although the Landlord submitted no documentary evidence to corroborate the testimony of the Agent for the Landlord, I found his evidence to be consistent and forthright and I could find no reason to discount his testimony. In the absence of any reliable evidence to dispute the Agent for the Landlord's testimony, I accept that it establishes the unit has been used as a secondary residence by a person owning voting shares in the corporation, or a close family member of that person.

While I accept the female Tenant's testimony that people who live in the residential complex have told her that they have seen people entering the unit on "rare" occasions and these people have told her that nobody is "living" there, I find that does not refute the submission that it is used periodically as a secondary residence.

Even if I accepted the Tenants' submission that someone in the strata management company told them they could not recover TELUS equipment that was left in the rental unit because there was nobody in the unit, I find that this submission has limited evidentiary value. Without more context, I find this information does not refute the Landlord's submission that the unit is used periodically as a secondary residence.

I have considered the email submitted in evidence by the Tenants, dated August 25, 2023, in which a neighbour declares that there some renovations were completed and there has been "some other activity". I find this email does not refute the Landlord's submission that the unit was renovated after it was vacated and is now used infrequently as a secondary residence.

Section 51(2)(a) of the *Act* stipulates that if steps were not taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice or the rental unit was not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

As the Landlord did not have the right to end this tenancy pursuant to section 49(1) of the *Act* and the Landlord did have the right to end the tenancy pursuant to section

49(4) of the *Act,* I find that the Landlord would be subject to the penalty imposed by section 51(2)(a) of the *Act* if the Landlord did not use the rental unit in accordance with section 49(4) of the *Act.*

As I have accepted the Agent for the Landlord's testimony that since September of 2022 the unit was periodically used as a secondary residence by a person owning voting shares in the corporation, or a close family member of that person, I find that the unit has been used as a secondary residence for a period of at least six months.

On the basis of the undisputed evidence, I find that the Landlord spent approximately 3 months renovating the unit prior to it being used as a secondary residence. Given that the people periodically occupying the unit live in another province, I find that a delay of three months for renovations is not unreasonable.

As I am satisfied that steps were taken to accomplish the stated purpose for ending the tenancy under section 49(4) within a reasonable period after the effective date of the notice and the rental unit was used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, I find that the Landlord is not subject to the penalty imposed by section 51(2)(a) of the *Act*. I therefore dismiss the application for compensation pursuant to section 51(2)(a) of the *Act*.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if the tenant suffers a loss as a result of the landlord breaching a section of the *Act*.

As the Tenants have failed to establish that the Landlord did not have the right to end the tenancy pursuant to section 49(4) of the *Act,* I find that the Tenants have failed to establish that the Landlord breached the *Act* by serving the Two Month Notice to End Tenancy for Landlord's Use of Property. As the moving costs incurred by the Tenants are not related to the Landlord breaching the *Ac*t, I find that the Tenants are not entitled to compensation for moving costs. I therefore dismiss the claim for moving costs.

I find that the Tenants have failed to establish the merits of their Application for Dispute Resolution and I dismiss their claim to recover for filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

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: May 23, 2023

Residential Tenancy Branch