



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Introduction

The hearing was convened in response to three Applications for Dispute Resolution.

SH and MJ filed an Application for Dispute Resolution, in which they applied to set aside a Two Month Notice to End Tenancy for Landlord's Use and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

MJ stated that this Application for Dispute Resolution was served to the Respondents on May 01, 2024, by registered mail. The Respondents acknowledged receipt of these documents and I find they were served in accordance with section 89 of the *Residential Tenancy Act* (Act).

JO filed an Application for Dispute Resolution, in which they applied to set aside a Two Month Notice to End Tenancy for Landlord's Use.

JO stated that this Application for Dispute Resolution was served to the Respondents by registered mail. The Respondents acknowledged receipt of these documents and I find they were served in accordance with section 89 of the Act.

KE filed an Application for Dispute Resolution, in which they applied to set aside a Two Month Notice to End Tenancy for Landlord's Use and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

KE stated that this Application for Dispute Resolution was served to the Respondents on April 26, 2024, by registered mail. The Respondents acknowledged receipt of these documents and I find they were served in accordance with section 89 of the Act.

SH and MJ submitted evidence to the Residential Tenancy Branch on several occasions in April and May of 2024. MJ stated that this evidence was served to the

Respondents by registered mail. The Respondents acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

JO submitted evidence to the Residential Tenancy Branch in April and May of 2024. JO stated that this evidence was served to the Respondents by registered mail. The Respondents acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

KE submitted evidence to the Residential Tenancy Branch on several occasions in April and May of 2024. KE stated that this evidence was served to the Respondents by registered mail. The Respondents acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted evidence to the Residential Tenancy Branch in June of 2024. KE stated that all of this evidence was served to the Applicants on June 06, 2024, by registered mail. All Respondents acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Two Month Notices to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- SH moved into SH's rental unit in 2011
- JO moved into JO's unit in 2008
- KE moved into KE's unit in 2005 or 2006
- The Landlord purchased all three units in August of 2023
- The units have separate entrances but are contained in one residential complex
- On April 17, 2024 the Two Month Notice to End Tenancy for Landlord's Use, dated April 16, 2024, was posted on SH's door
- On April 17, 2024 the Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 16, 2024, was posted on KE's door

- On April 17, 2024 the Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 16, 2024, was personally served to JO
- The Two Month Notice to End Tenancy for Landlord's Use of Property declares the units must be vacated by June 30, 2024 because they will be occupied by the Landlord, the Landlord's spouse, or the children of those individuals

In support of the Two Month Notice to End Tenancy for Landlord's Use of Property, GW stated that:

- GW intends to move into the rental unit with LY, who is her husband
- GW currently lives in a single family dwelling with two adult children, which is too crowded
- Photographs submitted in evidence show that their current living accommodations are crowded
- GW's son will remain living in the family home and will work remotely
- GW's daughter will remain living in the family home, where she will continue her post-secondary studies
- GW and LY will share the bedroom in KE's unit, which has two bedrooms
- The other bedroom in KE's unit will be used for guests
- GW will use one of the bedrooms in SH's unit for a home office, which is required because GW works from home
- GW will use the other bedroom in SH's unit for a sewing/crafts room
- LY will use the only bedroom in JO's suite for personal office space and exercise/meditation
- The Landlord will use one of the kitchens for most of their food preparation, and may sporadically use the other two kitchens
- The Landlord will use the three living rooms as separate sitting areas
- When the Two Month Notice to End Tenancy for Landlord's Use of Property was first served to the Tenants, the Landlord thought one of their sons may move into the unit(s)
- Their children do not currently plan on moving into any of the units
- For personal reasons, the Landlords wish to live in a home where they are provided with privacy and separation from each other
- The Landlord owns another home near their current residence
- The Landlord does not wish to live in the other home they own, as it does not provide them with the privacy and separation provided by the rental units
- The Landlord goes not wish to live in the other home they own, simply because it is closer to where their children will be living

- The other home they own is currently rented to a third party.

MJ stated that:

- The Tenants do not believe the Landlord intends, in good faith, to move into the three units
- The Tenants believe the Landlord intends to use one of the rental units for a residential purpose and that they intend to use the other two units for a non-residential purpose
- The Tenants believe that the Landlord wishes to end these tenancies so they can re-rent the units for higher rent
- Their unit would likely rent, in today's market, for \$3,000.00 per month
- Their current monthly rent is \$1,450.00
- Advertisements were submitted to show that units in the area are being offered for significantly higher rent
- It seems odd that the Landlord would want to occupy three separate units, which have their own entry and are not internally connected
- The Landlord owns another single family dwelling, which is closer to the home where the Landlord is currently living.

KE stated that:

- it makes more sense for the Landlord to move into the other home they own, as they would then be closer to their children if they moved to the other home they own
- the son of the former owner of the rental unit told the Tenants that the sellers did not intend to end their tenancies
- the Landlord sent the Tenants letters, dated September 15, 2023, in which EK2 informs them the Landlord or their children intend to occupy the unit in the first or second quarter of 2024
- in the letter of September 15, 2023, EK2 informs the Tenants that the Landlord will compensate the Tenant with the equivalent of one month's rent if they elect to move out of the rental unit prior to being served with a Two Month Notice to End Tenancy for Landlord's Use of Property
- his unit would likely rent, in today's market, for \$2,300.00 to \$3,000.00 per month
- he is currently paying rent of \$1,319.00.

JO estimates her unit would likely rent, in today's market, for \$2,000.00 to \$2,500.00 per month. JO is currently paying rent of \$853.00.

GW stated that she does not know how much the units would rent for in the current market, as it is not something she has considered. GW stated that the Landlord does not intend to re-rent the units.

KE2 stated that, in her professional opinion, JO's unit would rent for \$1,600.00 and the other two units would rent for \$2,200.00 to \$2,500.00 in the current market.

GW stated that the Landlord did not discuss their plans for the property with the sellers. AH stated that anything the sellers, or anyone acting on behalf of the sellers, told the Tenants about the Landlord's intent is hearsay.

Analysis

Section 49(4) of the Act stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that on April 17, 2024, the Landlord served SH with a Two Month Notice to End Tenancy for Landlord's Use of Property, by posting it on the door of SH's rental unit. This Notice declares the tenancy will end pursuant to section 49(4) of the Act, because that unit will be occupied by the Landlord, the Landlord's spouse, and the children of those individuals.

On the basis of the undisputed evidence, I find that on April 17, 2024, the Landlord served KE with a Two Month Notice to End Tenancy for Landlord's Use of Property, by posting it on the door of KE's rental unit. This Notice declares the tenancy will end pursuant to section 49(4) of the Act, because that unit will be occupied by the Landlord, the Landlord's spouse, and the children of those individuals.

On the basis of the undisputed evidence, I find that on April 17, 2024, the Landlord personally served JO with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declares the tenancy will end pursuant to section 49(4) of the Act, because that unit will be occupied by the Landlord, the Landlord's spouse, and the children of those individuals.

The Landlord bears the burden of proving they have grounds to end these tenancies in accordance with the Two Month Notices to End Tenancy for Landlord's Use of Property that were served.

I find the GW's testimony regarding the Landlord's intent to move into the rental unit was consistent, forthright, and credible. I find it was corroborated by:

- the affidavits submitted by GW and LY
- an employment letter establishing that GW works remotely
- a letter from a medical practitioner that declares LY requires space to exercise
- a redacted letter which appears to support the testimony that the Landlord's son has been offered a job that requires him to move to Vancouver
- a redacted letter, dated March 12, 2024, which appears to support the testimony that the Landlord's daughter has been accepted into a graduate program at a local university
- photographs that support the Landlord's testimony that the Landlord and their children are currently living in very crowded accommodations

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

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that "occupy" means "to occupy for a residential purpose." (See for example: Schuld v. Niu, 2019 BCSC 949). The result is that a landlord can end a tenancy under 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.

With respect, I find that the Tenants' argument that a portion of the rental units will be used for non-residential purposes is without merit. I find that working remotely from home in a portion of the living space, using a portion of the living space for an exercise or crafts area, and using a portion of the living space as a personal office should be considered a residential use. I therefore find that, based on GW's testimony, the Landlord will be using all of these rental units for a residential purpose.

On the basis of the undisputed evidence, I find it highly likely that the Landlord would be able to re-rent these units for higher rent than is currently being paid by the Tenants. Being able to re-rent the units for higher rent does not, however, establish that a landlord intends to do so. In these circumstances, I have absolutely no evidence to refute GW's testimony that the Landlord does not intend to re-rent the units.

Although many landlords do attempt to end tenancies for the primary purpose of re-renting the unit for greater rent, it cannot be automatically presumed that all landlords intend to do so.

While I concur with the MJ's submission that it seems odd that the Landlord would want to occupy three separate units, which have their own entry and are not internally connected, I find it is not impossible. GW's testimony that this is the lifestyle choice being made by the Landlord was consistent and credible. It would be inappropriate to discount GW's testimony simply because it is not a common lifestyle.

On the basis of the undisputed evidence, I find the Landlord owns another home near where they are currently residing. I find this has little relevance to my decision, as it is currently rented and the Landlord provided a plausible explanation of why they do not choose to live in this home.

I have considered the email submitted in evidence, dated August 15, 2023, in which the seller, or a person acting on behalf of the seller, informs the recipient, in part, that "the purchasers have provided no indication that they will do anything other than hold the property for the foreseeable future". I find this email is consistent with GW's testimony that the Landlord did not discuss their plans for the unit with the seller.

I find that this email is of little evidentiary value, as it does not establish that the Tenants were told by the purchaser that they intended to continue renting the units. Rather, it simply confirms that the Landlord did not tell the seller of what they intended to do with

the units. I therefore find it does nothing to refute the Landlord's submission that they intend to live in the units.

I have considered the email submitted in evidence, dated August 15, 2023, in which the seller, or a person acting on behalf of the seller, informs the recipient, in part, that the new owners are "local property investors". Regardless of why the sender of the email formed this opinion, it does nothing to refute the Landlord's submission that they intend to live in the units.

I have considered the letter submitted in evidence, dated September 15, 2023, in which EK2 informs them that the Landlord or their children intend to occupy the unit in the first or second quarter of 2024 and in which EK2 informs the Tenants that the Landlord will compensate the Tenant with the equivalent of one month's rent if they elect to move out of the rental unit prior to being served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

I find that the letter of September 15, 2023 does nothing to refute the Landlord's submission that they intend to live in the units. Conversely, I find the service of this letter could be interpreted to mean that the Landlord was acting in a professional manner and was proactively informing the Tenants of their intent to end the tenancy.

After considering all of the evidence, I find, on the balance of probabilities, that the Landlord has established grounds to end this tenancy pursuant to section 49(4) of the Act.

As I have determined that the Landlord has grounds to end this tenancy pursuant to section 49(4) of the *Act*, I dismiss the applications to set aside the Two Month Notices to End Tenancy for Landlord's Use. As the applications to set aside the Notices to End Tenancy have been dismissed and the Two Month Notice to End Tenancy for Landlord's Use complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

As the Tenants have failed to establish the merit of their Applications for Dispute Resolution, I find that none of the Tenants are entitled to recover the fee for filing an Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession for each rental unit.

At the hearing the Tenants requested that the effective date of an Order of Possession, if granted, be for the end of August of 2024. At the hearing the Landlord requested that the effective date of an Order of Possession, if granted, be for the end of July of 2024.

As these tenancies have been in place for many years and the Landlord has no current legal obligation to vacate their current home, I find it reasonable to make the Orders of Possession effective on August 31, 2024. These Orders of Possession may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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: June 20, 2024

Residential Tenancy Branch