DEFINITIONS MATTER – MAKING SURE A SALE-RELATED EVICTION COMPLIES WITH THE ACT

A recent B.C. Supreme Court decision[1] upheld a Residential Tenancy Branch ("**RTB**") decision requiring a landlord who sold a rental property to pay the previous tenants $65,000 for improperly issuing a Two Month Notice to End Tenancy (the "**Notice**"). This occurred despite the purchasers of the property being the ones that failed to comply with the Notice.

Background of the Tenancy and RTB Hearing

The North Vancouver home was rented to the tenants for $5,650 per month. When the landlord entered in a sales agreement with the buyer, they served the tenants with the Notice indicating that "the buyers intended to occupy the property." The tenants accordingly vacated the property. However, because they carried out major renovations that resulted in delays and stop-work orders from the municipality, the buyers never moved in.

The tenants made an application to the RTB pursuant to section 51(2) of the Residential Tenancy Act (the "**Act**") seeking compensation equal to 12 months' worth of rent on the basis that the stated purpose of the notice to end tenancy was not accomplished. In this case, they sought compensation against the landlord seller rather than the buyer.

The RTB issued a decision in favour of the tenants and against the landlord seller, because the buyers did not actually meet the definition of purchasers under the Act due to the nature of the multi-year sales agreement. As a result, the buyers were not responsible fort the improper Notice issued by the landlord seller.

B.C. Supreme Court Decision

The landlord seller sought judicial review of the RTB decision via the B.C. Supreme Court. The landlord argued that "the buyers had possession of the property and did not occupy it" and that "[the landlord] has no control over the property and ought not to be held liable." However, the court found that the buyers simply did not meet the definition of purchasers in the Act: a

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[1] *Sull v. Trevitt*, 2025 BCSC 1366.

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purchaser is someone who has agreed to buy "*at least half* of the full reversionary interest in the property."

In this case, the deal was a "option to purchase" agreement whereby the buyers would put down a certain amount and then pay a monthly interest fee for the next five years or until they decided to complete the purchase of the property. In other words, this was only a conditional sale, and the buyers did not own at least of the interest in the property when the Notice was issued.

The court agreed with the RTB arbitrator that "the wrongful act was not that the buyers had not occupied the property, but rather than the tenants ought not to have had their tenancy terminated in the first place" because not "all the conditions on which the sale depends have been satisfied."

A less significant argument from the landlord was that the eviction was justified because the tenancy agreement contained a clause reading that "tenant and owner both agree to give two full calendar months written notice, when they plan to end the lease." However, the court found that under the Act, a landlord cannot simply opt out of mandatory provisions. The clause was unenforceable because it contradicted the Act itself.

Takeaway from Recent Case Law

The implication of this B.C. Supreme Court decision is that conditional sales do not entitle a landlord to provide a two-month notice to end tenancy. Before making the decision to issue such a Notice, landlords must carefully consider the relevant definitions of both "landlords" and "purchasers" under the Act.

More generally, landlords must be aware that a landlord's own use notice issued on behalf of buyers does not always transfer liability risk to the buyers. The Notice must be properly issued to begin with.

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