

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- Cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) and an extension of the time limit to dispute the Two Month Notice under sections 49 and 66 of the Act
- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- An order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- Authorization to recover the filing fee for this application from the landlord under section 72 of the Act

This Hearing also deal with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- An order of possession under a Two Month Notice to End Tenancy for Landlord's use of property (the Two Month Notice), pursuant to sections 49 and 55
- Authorization to recover the filing fee for this application from the landlord under section 72 of the Act

Preliminary Matters

The following issue is dismissed with leave to reapply:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
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Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the issue identified in the application with leave to reapply as this matter is not related. Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

Should the Tenant be given more time to dispute the Two Month Notice?

Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on July 1, 2022, with a monthly rent of \$750.00, due on first day of the month, with a security deposit in the amount of \$375.00. The Landlord

The Tenant was served with the Two Month Notice on May 25, 2023, and it indicated that the landlord or landlord's spouse would be occupying the rental unit. The effective date of the notice as July 31, 2023. The Tenant disputed the Two Month Notice on August 22, 2023. The Landlord advised they live on the upper level and want to reclaim the Tenant's rental unit for their use.

The Tenant's legal advocate QL (the "Tenant's Advocate") argued they applied late to dispute the Two Month Notice because of an unstable pregnancy. On May 26, 2023, the Tenant went to the emergency room due to complications with their pregnancy and the doctor suggest bed rest for 2 weeks. The Tenant did not have a family doctor or an obstetrician, so they decided to stay on bed rest until they got a doctor. The Tenant's Advocate argued the Tenant does not speak English and has no support systems to help them file a dispute. Once the Tenant got a doctor, they went to the RTB office and had an information officer help file a dispute.

The Tenant is seeking compensation for a \$175.89 long distance phone bill. The Tenant's cell phone disconnected from the Wi-Fi around August 16, 2023, and they could not remember the password. The Tenant has two other devices connected to the Wi-Fi but was unable to retrieve the password. The Tenant wrote a letter to the Landlord and sent a text message asking for the Wi-Fi password. The Tenant's Advocate argued Wi-Fi was included in rent as stated in the rental agreement. The Tenant was not provided with the password until August 24, 2023. The Tenant uses WeChat a service that uses the internet to call and send text messages to people. Because the Tenant was not able to connect to the internet, they had to use long distance calling to get in touch with their family in China. The Tenant's Advocate argues the other 2 devices that were connected to the Wi-Fi did not support the use of WeChat. The Tenant's Advocate argued the Tenant tried to mitigate any loss by using free Wi-Fi around the city but due

to her unstable pregnancy they could not go out every time they needed to call their family.

The Landlord argues they were in Alberta when they received the message from the Tenant about the Wi-Fi, and they could not remember the password. Once they returned, they decided to contact legal resources to determine what they should do next. On August 24, 2023, the Landlord inputted the Wi-Fi password into the Tenant's phone. The Landlord argues cell service is not included in rent and that the Tenant had other devices connected to the Wi-Fi they could have used.

Analysis

Is the Tenant entitled to more time to cancel the Landlord's Two Month Notice?

Section 49 of the Act provides for a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 of the Act provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notice was issued to the tenant in good faith and truly intends on doing what they said they would do on the Two Month Notice. As the Tenant disputed this notice on August 22, 2023, and since I have found that the Two Month Notice was served to the Tenant on May 25, 2023, I find the Tenant had until June 9, 2023, to dispute the Two Month Notice.

The Tenant has applied for dispute resolution requesting more time to cancel a notice to end tenancy. Section 66 of the Act provides that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice.

The effective date of the Two Month Notice was July 31, 2023, the Tenant applied for more time on August 22, 2023, which is after the effective date of the Two Month Notice. Even if the Tenant can establish grounds that meet the requirements of exceptional circumstances, I cannot grant an extension of time once the effective date of the Two Month Notice has passed.

Pursuant to section 49(9) of the Act, if a tenant fails to dispute the Two Month Notice within the timeframe required, they are conclusively presumed to have accepted the end of the tenancy. I find the Tenant has conclusively presumed to have accepted the end of the tenancy.

Is the Landlord entitled to an Order of Possession?

I find the form and content of the Two Month Notice is valid pursuant to section 52 of the Act. The reason the Landlord has served the Two Month Notice is because the Landlord

wants to occupy the rental unit. Specially they want to reclaim the rental unit as living space. The Landlord occupies the upper floor and plans to use the main floor as part of their living accommodation. Since the Tenant disputed the Two Month Notice after the effective date, they are conclusively presumed to have accepted the end of tenancy and must vacate the rental unit. As this has not occurred, I find that pursuant to section 55(2)(b) of the Act, the Landlord is entitled to an Order of Possession.

Given the fact that the Tenant is 6 months pregnant, has no support systems in BC and has a language barrier, I make the Order of Possession effective November 30, 2023.

Is the Tenant entitled to Compensation?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant's Advocate argued the Tenant suffered a loss when their cell phone lost connection to the Wi-Fi and as a result the Tenant incurred long distance charges to connect with their family back in China. A phone bill showing the charges was submitted into evidence. Internet was included in rent, as stated in the tenancy agreement.

However, the Tenant has not established the loss resulted from the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement. The Landlord did not change the Wi-Fi password, the Tenant's phone disconnected from the Wi-Fi. While the Landlord took several days to provide the password, the Landlord argued they were out of town without access to the password and then obtained legal advice before providing the password. I do not find that this constitute a breach of the tenancy agreement, Act or Regulation. Additionally, the Tenant had other devices that were still connected to the Wi-Fi and the Tenant has not provided sufficient evidence to establish that those devices could not have been used to contact their family.

Based on the above, I dismiss the Tenant's claim for compensation.

Filing Fee

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act. I authorize the Landlord to deduct \$100.00 from the Tenant's security deposit to recover the filing fee.

As the Tenant was not successful in their Application, I decline to award them the cost of the filing fee.

Conclusion

I grant an Order of Possession to the Landlord effective **1:00pm on November 30, 2023, after service of this order** on the Tenant. Should the Tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit to recovery the filing fee.

The Landlord is reminded of their obligations under section 51(1) of the Act, which entitles a tenant to one month's rent compensation when a Two Month Notice for Landlord's Use is served.

I dismiss the Tenant's application in its entirety.

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: October 13, 2023

Residential Tenancy Branch