

DECISION

Introduction

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

- Cancellation of a Two Month Notice for Landlord's Use of Property (the "Two Month Notice") pursuant to section 49
- Cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") under section 47 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord was served on July 22, 2023, in person in accordance with section 89(1) of the Act. The Tenant served via email and provided a copy of the RTB #51 and a copy of the email sent.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

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Issues to be Decided

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

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

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

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 June 1, 2020, with a monthly rent of \$2,172.60 due on the first of the month and a security deposit of \$1,050.00.

The Landlord served a Two Month Notice for Landlord's Use on the Tenant on July 11, 2023 with a move out date of September 30, 2023. The Two Month Notice indicated that the Landlord's father or mother would be occupying the rental unit. Landlord also served a One Month Notice for Cause on August 12, 2023, and the cause selected is repeated late payment of rent. The Tenant has applied to dispute the Two Month Notice and One Month Notice.

The Landlord argued they served the Two Month Notice because their parents received a two-month notice from their landlord on June 15, 2023 that required them to vacate their rental unit August 31, 2023. The two-month notice received by the Landlord's parents and their tenancy agreement are submitted into evidence. The Landlord argued after their parents received the notice they must leave their rental unit; they began looking at places to rent but the prices were high. The Landlord's parents asked the Landlord if they could move into the rental unit and they advised they would be willing to pay what the Tenant is paying for rent. Currently, the Landlord and their parents are living in a one-bedroom place. The Landlord and their parents do not own any other property.

The Tenant argued they don't believe that the Landlord's parents will occupy the rental unit and that the Two Month Notice was served out of retaliation because the Tenant asked for the furnace to be fixed. The Tenant advised that prior to the Two Month Notice being served the Landlord complained about the low rent but never asked to increase it. After being served the Two Month Notice the Tenant advised they approached the Landlord about increasing rent if they can continue living in the rental unit but no agreement was reached.

The Landlord argued they served a One Month Notice because after the Tenant disputed the Two Month Notice they were late paying rent. The Landlord argued they were late paying rent 3 times in 2023, 4 times in 2022, 3 times in 2021 and 4 times in 2020. The Landlord argued they did not know they could serve a 10-day notice once rent was late but that they always reminded the Tenant they need to pay rent on time.

The Tenant argued they were never given written notice about the late rent payment and that the One Month Notice was only served because they disputed the Two Month Notice.

Analysis

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

Section 49 of the Act states that a landlord may end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 of the Act states 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. As the Tenant disputed this notice on July 16, 2023, and since I have found that the Two Month Notice was served to the tenant on July 11, 2023, I find that the Tenant has applied to dispute the Two Month Notice within the time frame allowed by section 49 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the Two Month Notice.

The Tenant disputes that the Notice is being issued in good faith. "Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. To reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence.

I accept the evidence of the Landlord that their parents intend to occupy the rental unit since their current living situation has ended. In support of this the Landlord provided a copy of their parent's previous tenancy agreement and the two-month notice their parents received. The timing of the Two Month Notice aligns with when the Landlord's parents found out they need to find a new living situation. Additionally, neither the Landlord nor Landlord's parents own any property in BC.

While the Tenant asserted the Landlord served the Two Month Notice out of retaliation after they requested to have the furnace fixed, I find this to be merely speculative or conjecture. There is no documentary evidence to support this. Additionally, the Tenant argued the Landlord complained about the rent amount; however, the Landlord never attempted to increase rent. The only rent increase conversation happened after the Tenant received the Two Month Notice and the Tenant approached the Landlord to discuss a rent increase so they could continue occupying the rental unit.

I find the Landlord to be credible and I accept the testimony of the Landlord that their parents intend to occupy the rental unit.

Based on the above, I dismiss the Tenant's application to cancel the Two Month Notice.

I find the form and content of the Two Month Notice is valid pursuant to section 52 of the Act. I find that pursuant to section 55(1) of the Act, the Landlord is entitled to an Order of Possession.

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

Since I have already ended the tenancy based on the Two Month Notice, it is not necessary for me to consider the One Month Notice. I dismiss the Tenant's application to cancel the One Month Notice without leave to reapply.

An Order to have the Landlord comply with the Act

Since I have ended the tenancy based on the Two Month Notice it is not necessary for me to consider if the Landlord should comply with the Act. I dismiss the Tenant's application to have the Landlord comply with the Act with leave to reapply.

Filing Fee

As the Tenant was not successful in these applications, the Tenant's applications for authorization to recover the filing fee for these applications from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's applications are dismissed in their entirety.

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

The Tenant is entitled to one month's rent compensation as required under section 51(1) of the Act.

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 23, 2023

Residential Tenancy Branch