



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act).

The Tenant's application for:

- Cancellation of the Two Month Notice to End Tenancy for Landlord's Use or Property (the Two Month Notice),
- Cancellation of the Four Month Notice to End Tenancy for Demolition, or Conversion of a Rental Unit (the Four Month Notice),
- The Landlord to comply with the Act, regulation and/or the tenancy agreement,
- Reimbursement of the filing fee.

And the Landlord's application for:

- Vacant possession of the rental unit to perform renovations or repairs

Tenant JM, and Advocate BP and KM attended the hearing for the Tenant.

Agent TX attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package), Evidence and Preliminary Matters

Agent TX confirmed receiving the Proceeding Package, documentary evidence and the amendments for the Tenant's application. As such, I find the Landlord was served with the required materials in accordance with the Act. The Landlord testified that they did not submit any evidence in response to the Tenant's application, or to the Residential Tenancy Branch (RTB).

At the outset of the hearing, Advocate BP clarified that the Tenant amended the file and added the issue for the Landlord to comply with the Act, regulation and tenancy agreement due to their concern with the Landlord issuing multiple notices to end tenancy. BP stated that the primary reason for the Tenant's application is for cancellation of the Landlord's Two Month Notice and Four Month Notice to end tenancy.

As per RTB Rules of Procedure (Rules) Rule 2.3, I dismiss the claim for an order requiring the Landlord to comply with the Act, with leave to reapply.

BP testified that the Landlord did not serve their Proceeding Package and documentary evidence to the Tenant. The Landlord testified that they did not serve their application to the Tenant.

Section 59(3) of the Act and RTB Rules 3.1 both require that an applicant serve the respondent with these documents within three days of receiving the aforementioned proceeding package from the RTB.

The Landlord did not do this within the required timeframe, or at all. As such, the Tenant has not been provided notice of the Landlord's application and it would be unfair to proceed in hearing the matter.

I dismiss the Landlord's application for vacation possession of the rental unit to perform renovations or repairs with leave to reapply, due to the service issues described above.

Issue(s) 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 Landlord's Four 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

Evidence was provided showing that this tenancy began in July 2012 and the monthly rent is \$3,861.00. The Tenant paid a security deposit of \$1,750.00, which the Landlord continues to hold in trust.

On August 20, 2023, the Landlord served to the Tenant the Four Month Notice, with an effective date of January 1, 2024. A copy of the Four Month Notice was submitted in evidence. The Four Month Notice is dated and signed, and lists the following reason to end the tenancy:

- The Landlord is going to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.
- Description: interior renovation and exterior repair.
- The permit number was not provided, and the Landlord indicated the permit number was not required by the City of Delta.

On November 1, 2023, the Landlord served to the Tenant the Two Month Notice, with an effective date of January 1, 2024. A copy of the Two Month Notice was submitted in evidence. The Two Month Notice is dated and signed, and lists the following reasons to end the tenancy:

- The rental unit will be occupied by the child of the Landlord, or the Landlord's spouse.
- The rental unit will be occupied the father or mother of the Landlord or Landlord's spouse.
- 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 rental unit.
- Company owned property, need the property for direct employee.

TX testified that the Landlord served the Four Month Notice with an effective date of January 1, 2024. TX testified that the rental unit is on a property that is owned by a company. TX stated that the Landlord wants to renovate the rental unit for their direct employee to occupy the rental unit. TX testified that the Landlord does not have a building permit, as they first need to provide drawings to the City of Delta.

TX stated the Landlord served the Two Month Notice for the same reasons noted above. TX stated the Landlord selected other options of a close family member to occupy the rental unit, as they decided they should mark all options presented in order to obtain an end to the tenancy.

BP stated that the Tenant disputes that the Four Month Notice and Two Month Notice were issued in good faith, or in accordance with the Act. BP stated that the Landlord provided conflicting information. They first indicated that the rental unit will be occupied by a close member of a family corporation, and later indicated the rental unit will be occupied by an employee.

Analysis

Should the Landlord's Two Month Notice be cancelled? Should the Landlord's Four 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. 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.

Section 49(6) of the Act states a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. The Tenant may dispute a notice by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

As the Tenant disputed the Two Month Notice on November 12, 2023 and as the Two Month Notice was served to the Tenant on November 1, 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. As the Tenant disputed the Four Month Notice on September 1, 2023 and as the Four Month Notice was served to the Tenant on August 20, 2023, I find that the Tenant has applied to dispute the Four Month Notice within the time frame allowed by section 49 of the Act. Therefore, per Rule of Procedure 6.6, the Landlord has the burden to prove that they have sufficient grounds to issue the Two Month Notice.

The Tenant disputes that the Two Month Notice and Four Month Notice are 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.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue the Two Month Notice and the Four Month Notice to the Tenant and obtain an end to this tenancy for the reasons stated below:

On the Two Month Notice the Landlord indicated multiple reasons for ending the tenancy, and admitted they checked off all options that would result in an end to the tenancy for an employee to occupy the rental unit. I find the Landlord testified to the invalidity of the Two Month Notice by indicating the above. A "employee" does not meet the definition of a close family member as per section 49(1) of the Act, or of a family member of a corporation set out at section 49(2) of the Act. The Landlord did not provide any documentary evidence to support their Two Month Notice, or to clarify the true intent of the Two Month Notice.

I find the Four Month Notice was not supported by the necessary permits or approvals required by law to convert the rental unit for use by a caretaker. The Landlord stated permits are not required as per the City of Delta, but they did not prove this through documentary evidence.

By issuing multiple notices for different reasons to end the tenancy, I find the Landlord has not established sufficient grounds for both the Two Month Notice and the Four Month Notice. I find the Landlord's actions raise the issue of an ulterior motive or purpose for ending the tenancy.

Therefore, the Tenant's application is granted for cancellation of the Landlord's Two Month Notice and Four Month Notice under section 49 of the Act.

The Two Month Notice of November 1, 2023 and the Four Month Notice of August 20, 2023 are cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

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

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act. Per section 72(2) of the Act, the Tenant may deduct this amount from one future month's rent in full satisfaction of the recovery of the cost of the filing fee. Such a deduction is not grounds for the Landlord to issue a notice to end tenancy for non-payment of rent, as a tenant is entitled to withhold rent when authorized by an arbitrator.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's Two Month Notice and Four Month Notice under section 49 of the Act.

The Two Month Notice of November 1, 2023 and the Four Month Notice of August 20, 2023 are cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

I authorize the Tenant to deduct \$100.00 from one future month's rent in full satisfaction of the recovery of the cost of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 8, 2023

Residential Tenancy Branch