

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 (Two Month Notice) under section 49 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) 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 dealt with the Landlord's cross Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under sections 49 and 55 of the Act
- an order for the Tenant regarding the Landlord's request - RTB-12L-O: Order of Possession for me owner/landlord to relocate in my property.

Tenant H.K. attended the hearing for the Tenant.

Landlord's Partner, Business Partner and Agent S.D. attended the hearing for the Landlords.

For this decision, I may refer to the Landlords in the singular form.

Service of the Tenant's Notice of Dispute Resolution Proceeding and Evidence

A copy of the written tenancy agreement was provided which showed that the Landlord's address for service was the same address as the rental unit.

The Landlord's Partner and Agent S.D. testified that they did not receive the Tenant's Notice of Dispute Resolution Proceeding and Evidence.

The Tenant testified that they served the Notice of Dispute Resolution Proceeding and their evidence to the Landlord on April 19, 2024. The Tenant stated that they served the Landlord at an address the Landlord provided. The Tenant affirmed that they frequently receive the Landlord's mail at the rental unit and forward the Landlord's mail to this address the Landlord provided. The Tenant submitted a copy of a text message from the Landlord containing the Landlord's address for service. The Tenant also submitted copies of the Canada Post Tracking Receipt and the tracking number to support service.

Based on the text message evidence, the testimony of the Tenant, and on a balance of probabilities, under section 71 of the Act I find that the Tenant's Notice of Dispute Resolution Proceeding and evidence was sufficiently served to the Landlord and deemed received on April 24, 2024.

Service of the Landlord's Notice of Dispute Resolution Proceeding and Evidence

The Tenant testified that they did not receive the Landlord's Notice of Dispute Resolution Proceeding and Evidence.

The Landlord's Agent S.D. testified that they served the Notice of Dispute Resolution Proceeding and Evidence by registered mail on May 8, 2024, by registered mail. S.D. submitted the Canada Post Tracking Receipt and tracking number to support service.

Based on the Canada Post Tracking Receipt, the testimony of the Landlord, and on a balance of probabilities, I find that the Landlord served the Notice of Dispute Resolution Proceeding and Evidence in compliance with section 88 and 89 of the Act. I further find that the Tenant is deemed to have received the Landlord's Notice of Dispute Resolution Proceeding and Evidence on May 13, 2024, the fifth day after the registered mailing under section 90 of the Act.

Preliminary Matters

Unrelated Claims

Residential Tenancy Branch Rules of Procedure Rule 2.3 states that claims made in an Application for Dispute Resolution must be related to each other.

Rule 6.2 provides an arbitrator with the discretion to dismiss unrelated claims with or without leave to reapply. This Rule provides an example that if a party has applied to cancel a Notice to End Tenancy, or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

In this instance, I find that the most significant and urgent issue to be determined is whether the Landlord had sufficient grounds to issue the Two Month Notice and similarly whether the tenancy will continue.

As a result, I exercise my discretion under Rule 6.2 to dismiss the following unrelated issues from the Tenant's application with leave to reapply:

- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Previous Hearing

During this hearing, I was made aware that the parties have had a Previous Hearing with another arbitrator from the Residential Tenancy Branch where a Decision was released on March 13, 2023. The Previous Hearing File Number is referenced on the cover page of this decision.

In the March 13, 2023, Decision, the Arbitrator ordered the Landlord's Agent S.D. not to communicate with the Tenant verbally or in writing any further, and the Arbitrator emphasized the Tenant's right to quiet enjoyment under section 28 of the Act.

In this instance, based on the evidence submitted by the parties, the testimony of the parties, it is overwhelmingly clear that the Landlord's Agent S.D. has not complied with the Arbitrator's Orders from the March 13, 2023, Decision. Specifically, I find that the Landlord's Agent S.D. has continued to communicate with the Tenant in contravention of the Arbitrator's Order since March 13, 2023, to the time the Tenant's Application was filed.

The Tenant submitted a substantial amount of email and text message evidence to document the Landlord's inflammatory conduct and contact. In one example, the Tenant submitted an email from April 24, 2024, labelled "steve_email_Apr_24_2024_939_AM.pdf", where the Landlord's Agent S.D. wrote:

Your sister is using our unit for prostitution. My buddy will email you a picture from her having sex with 3 men. I think he already linked that very clear picture of her to hindu temples in BC. Will let you know.

In another example, the Tenant submitted text message evidence from March 26, 2024, labelled "steve_text_2024-03-26_page_2.pdf", where the Landlord's Agent S.D. wrote to the Tenant several messages such as:

Schizo ugly bitcg [sic]... Good day skank... Demon like you I flush toilet then you guys go down the drain

In one more example, the Tenant submitted a copy of a picture labelled "censored_pornographic_image.pdf", in this picture the Tenant alleged that the Landlord's Agent photoshopped and placed the Tenant's face onto adult-oriented material and sent it to the Tenant.

I will note that I have not included the most severe and inflammatory email and text messages, which often contained negative references to gender, ethnicity, fornication, and religion.

I will also note that the Tenant has submitted a substantial amount of similar examples to show consistent communications from the Landlord's Agent S.D. since the Previous Hearing and Decision from March 13, 2023 to the time of this hearing.

I will further note that throughout this hearing the Landlord's Agent S.D. frequently interrupted the proceedings with irrelevant and inflammatory remarks. I find that the Landlord's Agent S.D.'s behavior appears to be consistent with the behavior described by the Arbitrator from the Previous Hearing in their March 13, 2023, Decision.

Due to the above, I am highly concerned about the Landlord's Agent S.D.'s repeated failure to comply with orders made at the Previous Hearing, and S.D.'s contravention of the Act in particularly egregious manners so I will be forwarding a copy of this decision to my manager.

If my manager is of the opinion that these circumstances could reasonably lead to administrative penalties, then they will send a copy of this decision along with any other relevant materials including but not limited to the Tenant's application, the Landlord's cross application, and the March 13, 2023, Decision from the Previous Hearing to the Compliance and Enforcement Unit. This separate unit of the Residential Tenancy Branch is responsible for administrative penalties that may be levied under the Act. They have the sole authority to determine whether to proceed with a further investigation into this matter and the sole authority to determine whether administrative penalties are warranted in these circumstances.

After any dispute resolution materials are sent, neither I nor my manager play any role in their process and, if the Compliance and Enforcement Unit decides to pursue this matter, they do not provide me or my manager with any information they may obtain during their process.

Before any administrative penalties are imposed, a person will be given an opportunity to be heard. While the Compliance and Enforcement Unit can review the contents of the Tenant's application, the Landlord's cross application, and the March 13, 2023, Decision from the Previous Hearing. They are not bound by the findings of fact that have been made in our decisions.

Any further communications regarding an investigation or administrative penalties will come directly from the Compliance and Enforcement Unit.

I will emphasize the Orders made in the Decision from the Previous Hearing, specifically communications to the Tenant should only be made by Landlord B.Z.Y. Should the Tenant continue to receive communications in a manner that does not comply with the Orders made at the Previous Hearing, I encourage the Tenant to contact the Compliance and Enforcement Unit at the Residential Tenancy Branch.

Issues to be Decided

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

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.

The Landlord's Agent S.D. claimed that the parties did not have a written tenancy agreement.

The Tenant provided a copy of the written tenancy agreement which showed that this tenancy began on March 1, 2020, the monthly rent was \$390.00, and due on the first day of the month. According to this written tenancy agreement, the Landlord collected a \$200.00 security deposit and continues to hold the security deposit in trust. The Tenant testified that the rental unit is a room in an apartment. The tenancy is ongoing.

The Landlord's Agent S.D. testified that they served the Tenant with the Two Month Notice because the Landlord B.Z.Y. wants to move into the rental unit. S.D. stated that the Landlord's business in the interior of the province is not doing well, and that this is one of the reasons the Landlord B.Z.Y. wants to move back into the rental unit.

A copy of the Two Month Notice dated March 24, 2024, was submitted by the parties, the reason cited on the Two Month Notice states that the rental unit will be occupied by the landlord or the landlord's spouse. The effective date of the Two Month Notice is June 1, 2024.

The Landlord's Agent S.D. submitted a news article to support their claim that the Landlord's fruit business in the interior has been severely challenged in recent times. S.D. testified that the Landlord B.Z.Y. currently lives in a motorhome in the interior of the province. In addition, S.D. also submitted a seven-paged PDF file labelled "Additional_evidence", the first two-pages of which showed an email dated May 31, 2024, a passage from the email reads:

"Tenant H.K. never had to pay anything else that her ridiculous 390\$ [sic] a month for a room located inches,,,from everything mall, trains,ect [sic]"

The Tenant testified that they do not believe the Landlord B.Z.Y. intends to move into the rental unit. The Tenant alleged that the Landlord is not pleased with the amount of rent the Tenant is paying, and that the Landlord has attempted to increase the rent several times in the past. The Tenant submitted copies of several written communications where the Landlord's Agent S.D. has requested for additional rent.

For instance, the Tenant submitted a two-paged letter and contract received from the Landlord's Agent S.D. on October 1, 2023, where the Landlord's Agent S.D. has attempted to persuade the Tenant to agree to new terms for the tenancy, one the changes is a rent increase to \$700.00 a month. This evidence is labelled "attempt_to_rewrite_lease_page_1.jpg" and attempt_to_rewrite_lease_page_2.jpg.

In another example, the Tenant submitted a copy of a single page email message from the Landlord's Agent S.D. dated April 23, 2024, labelled "steve_email_Apr_23_2024_657_PM.pdf", a passage from the email reads:

"We cannot afford paying utilities thisvtime [sic] Hey 1000 a month for a furnished 2 bedr [sic] in that area all bills cover hey?"

In response the Landlord's Agent referred to page three of the abovementioned documentary evidence labelled "Additional_evidence.pdf" and testified that the parties were mutually toxic to each other and frequently berated each other during the tenancy.

Analysis

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

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 49(3) of the Act states that a landlord who is an individual 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 April 15, 2024, and since the Tenant's application confirmed they received the Two Month Notice on April 10, 2024, I find that the Tenant has applied to dispute the Two Month Notice within the time frame allowed by section 49 of the Act.

The Landlord has the burden to prove that they have sufficient grounds to issue the Two Month Notice.

The Tenants dispute that the Notice is being issued in good faith. The Tenant alleged that the Landlord's chief concern is the amount of rent the Tenant is paying is too low.

"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 that the Landlord has not provided sufficient evidence to demonstrate they have issued the Two Month Notice in good faith.

I find that the Landlord's Agent S.D. has not provided any meaningful pieces of evidence of testimony to support their claim that the Landlord B.Z.Y. has plans to move into the rental unit as stated on the Two Month Notice. For example, S.D. only spoke briefly about the financial challenges of the Landlord's fruit business and referred to recent news articles about the trouble the Landlord's crops are facing. However, S.D. did not expand on whether the Landlord B.Z.Y. has any plans to change their business or to move their business to corroborate their story that the Landlord will be moving to the rental unit. I find that the absence of such corroborating details did not contribute to the Landlord's version of events.

Similarly, the Landlord's evidence submitted in both the Tenant's application and the Landlord's cross application did not provide any telling signs that the Landlord intends to accomplish what they stated on the Two Month Notice.

Moreover, I find that the Landlord has not succeeded in addressing and overcoming the Tenant's allegations that the Landlord's main motivation is to end the tenancy due to the Landlord's Agent S.D.'s opinion that the monthly rent is currently too low.

I assign a significant amount of weight to the substantial amount of evidence provided by the Tenant which showed the Landlord's Agent S.D. consistently and repeatedly brought up the topic of the monthly rent being too low between the Previous Hearing and the time of this hearing. I find that this supports the Tenant's claim that the Landlord's Agent S.D. has an ulterior motive that does not align with the stated purpose on the Two Month Notice.

I accept the Tenant's claim that the Landlord's Agent S.D. frequently used intimidating tactics such sending large amounts of messages often in a threatening manner to advance Landlord's Agent S.D.'s agenda of increasing the rent. I find that this contributes to the Tenant's allegation that the Landlord has not demonstrated good faith.

For the above reasons, I grant the Tenant's application to cancel the Two Month Notice dated March 24, 2024, and correspondingly I decline the Landlord's request for an Order of Possession based on the Two Month Notice.

Conclusion

The Two Month Notice is cancelled, the tenancy will continue in accordance with the tenancy agreement and 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: July 8, 2024

Residential Tenancy Branch