# DECISION

## Introduction

This hearing dealt with the Tenant's First 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
- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 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 Tenant's Second Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Landlord's Use of Property (One Month Notice) under section 49 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for repairs under section 32 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Tenant and the Tenant's brother/agent (the Agent) attended the hearing for the Tenant.

The Landlord attended the hearing for the Landlord.

## Service of Notice of Dispute Resolution Proceeding and Evidence

The Agent testified that he served the Landlord with the First Application for Dispute Resolution and Evidence via registered mail. A registered mail receipt dated July 19, 2024 was entered into evidence. The Landlord testified that he declined to pick up the registered mail package because it was mailed by the Agent and not the Tenant. The

Landlord testified that he received a copy of the Notice of Dispute Resolution Proceeding and the Tenant's evidence from the Residential Tenancy Branch.

The Tenant is entitled to have the Agent act on her behalf. The Landlord was not permitted to refuse service. I find that the Landlord was deemed served with the Tenant's First Application for Dispute Resolution and Evidence on July 24, 2024, 5 days after it's mailing, in accordance with section 89 and 90 of the Act.

The Agent testified that he served the Landlord with the Second Application for Dispute Resolution and Evidence via registered mail. A registered mail receipt dated August 12, 2024 was entered into evidence. The Landlord testified that he declined to pick up the registered mail package because it was mailed by the Agent and not the Tenant. The Landlord testified that he received a copy of the Notice of Dispute Resolution Proceeding and the Tenant's evidence from the Residential Tenancy Branch.

The Tenant is entitled to have the Agent act on her behalf. The Landlord was not permitted to refuse service. I find that the Landlord was deemed served with the Tenant's Second Application for Dispute Resolution and Evidence on August 17, 2024, 5 days after it's mailing, in accordance with section 89 and 90 of the Act.

The Landlord testified that he served the Tenant with his evidence by putting it through the mail slot on her door, via email and via registered mail. No proof of service documents were entered into evidence.

The Agent testified that the Tenant received evidence through the mail slot. The Agent confirmed that the Tenant received some of the documents uploaded to the Residential Tenancy Branch but was unsure on other documents. I instructed the Tenant and Agent to inform me during the hearing if they did not receive any evidence presented by the Landlord. The Tenant and the Agent did not indicate that any evidence presented by the Landlord was not received. The Agent testified that he was able to review all evidence served by the Landlord in advance of this hearing. I find that the Landlord's evidence was served on the Tenant in accordance with section 88 of the Act as none of the presented evidence was objected to by the Tenant or Agent.

## Preliminary Matter

Rule 6.2 of the Residential Tenancy Branch Rules of Procedure states 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 accordance with Rule 6.2 of the Rules of Procedure, I dismiss the following claims, with leave to reapply:

- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act

- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for repairs under section 32 of the Act

## 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.

Both parties agree that this tenancy started on or around June 8, 2007 with a different landlord. It was undisputed that the Landlord has owned the property for approximately 2 years. Both parties agree that rent in the amount of $820.00 is due on the first day of each month.

The Landlord testified that he served the Tenant with the Two Month Notice via registered mail on July 10, 2024. The Agent confirmed that the Tenant received the Two Month Notice. The Tenant filed to dispute the Two Month Notice on July 14, 2024.

The Two Month Notice was entered into evidence, is signed by the Landlord, is dated July 10, 2024, gives the address of the rental unit, states that the effective date of the notice is July 10, 2024, is in the approved form, #RTB-32, and states that the Landlord or Landlord's spouse will move into the rental property.

The Landlord testified that he plans to move into the rental property and that his grand niece and nephew from overseas will move into his current home. The Landlord entered into evidence proof of his grand niece's Canadian study permit.

The Agent testified that the Landlord served the Two Month Notice because the Tenant refused to agree to an illegal rent increase. The Tenant entered into evidence a letter from the Landlord to the Tenant which the Tenant testified she received in June or July of 2024. The letter states:

> The present is about the increase in strata fees and special levy. Both were since October 1st of 2023.
>
> In your case, the former is monthly cost of $88.92 since that date, the latter is a one lumpsum of $1076.52. I have attached the legal documents related and asking for the amounts.
>
> I think is it me who must pay the special levy. Your arrears are then $88.92 x 9, or $800.28. As of July, the monthly rent per se increases from $811.87 to $900.89, due to the $88.92. But with the insurance ($56.00 per month) and the property tax ($87.02 per month) it will be $1,054.91.

The Agent testified that he responded to the above letter via email. An email to the Landlord dated July 4, 2024 was entered into evidence and states in part:

> ….Secondly, your letter regarding increasing [the Tenant's] rent is in violation of the Residential Tenancy Act. Notices of rent increases can only be submitted using Residential Tenancy form $RTB-7. They can be no earlier than 1 year after the last increase which was August 2023. The current allowable increase is 3.5%. This would increase her rent from $820 per month my $28.70 to 848.70.
>
> The increase in the strata fees, insurance costs and taxes are business expenses that you bear as a Landlord and are not [the Tenant's] responsibility….

The Landlord testified that he and the Tenant had an oral agreement that the monthly rent amount would not be subject to legislated increases but will increase or decrease with the rental unit's carrying costs. The Landlord testified that the Tenant's refusal to pay the requested rent increase was not the reason alone that the Two Month Notice was served.

The Landlord testified that he served the Tenant with the One Month Notice via registered mail on July 25, 2024. The Tenant confirmed receipt and applied to dispute the One Month Notice on August 3, 2024.

The One Month Notice was entered into evidence, is signed by the Landlord, is dated July 25, 2014, gives the address of the rental unit, states that the effective date of the notice is August 31, 2024, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - put the landlord's property at significant risk.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The Landlord testified that the date contains a typo and should have read 2024, not 2024.

The Details of Cause section of the One Month Notice states:

> The tenant prevented for at least three times the last four months or so to enter the unit for me to take care of the bed bugs. The insurance company refused to enter the unit with the bed bugs to continue the repair.
>
> On July second, I wrote a letter and leaved [sic] a copy in the mail slot of the door of the tenant as required by the law for me to care for the bed bugs for the insurance company to fix at time to continue the repair.

> The tenant responded by denying me my request to care for the bed bugs for the insurance company to fix time to continue the repair.
>
> On July 10, I wrote another letter and leaved [sic] a copy in the mail slot of the door of the tenant as required by the law for me to care for the bedbugs at a precised [sic] period for the insurance company to fix the time to continue the repair. The tenant did not reply to me as requested. I post on the tenant's door a warning for one month notice to end tenancy four days ago.

Both parties agree that there was a flood some months ago and that repairs to the unit are required. Both parties agree that the rental unit has bed bugs, and that the insurance company will not enter the unit to fix the water damage caused by the flood until the bed bugs are gone. It was undisputed that the Strata has treated the rental unit 5 times but the treatment has been ineffective.

I asked the Landlord to provide me with a timeline off all instances where the Tenant denied the Landlord entry to the rental unit. The Landlord entered into evidence a letter to the Tenant dated June 30, 2024 in which the Landlord requests entry to the rental unit on July 6, 2024 between 11 am and 5 pm. The Landlord testified that in a letter dated July 3, 2024 the Tenant refused entry to the rental unit. The Landlord testified that he wanted to inspect the rental unit to ensure that the bedbugs were gone. The July 3, 2024 letter from the Tenant to the Landlord states in part:

> [A.] sprayed on June 18th and the process will continue til [sic] July 18th, at which time he said he would call me. I thought I had already told you about this.
>
> DO NOT ENTER on July 6 from 11 to 5 pm

The Landlord entered into evidence a letter from the Landlord to the Tenant dated July 10, 2024 which states:

> [Tenant], thank you for your response to my letter of June 30, 2024.
>
> Please let me know, always in writing and slide such a response of yours in the opening of my door [number redacted for privacy] at the latest on July 20, that everything is good so the people from the insurance can set up a time for them to enter the unit and continue with the repair.
>
> In the eventuality that nothing is done or there are still bedbugs, I request you to write me that and slide it in the opening of my door [number redacted for privacy] at the latest on the same date of July 20, 2024. I will enter the unit on July 21, 2024, between 11:00 AM and 5:00 PM to clean an remove bed bugs so the insurance company can complete the repair.

The Landlord entered into evidence a letter to the Tenant dated July 21, 2024 which states:

> Reference: *Warning that you may receive a one-month notice to vacate your renting unit.*
>
> As I did not receive a response to my letter of July 10, 2024 from you, would you like to let me know if there are still bed bugs in your unit? It is now after July 18, 2024, the date you mentioned in your letter of July 3, 2024.

The Agent testified that there was no point in the Landlord coming to view the rental property right after it had been treated for bed bugs which is why entry for July 6, 2024 was denied. The Agent testified that he emailed the Landlord to talk about the treatment and agreed to the July 21, 2024 entry requested in the Landlord's July 10, 2024 letter. An email dated July 21, 2024 from the Agent to the Landlord was entered into evidence which states:

> [The Tenant] does not want to be present when you inspect the apartment. You will need to arrange for entrance and notify me if you do not have a key. [The Tenant] will take a video of the apartment before you arrive. [The Tenant] and I do not want you to spray the apartment with any pesticide because to our knowledge you are not a qualified pest control officer and the insecticides could be a danger to her health….

The Agent testified that the Tenant allowed for the July 21, 2024 inspection of the rental unit after the bedbug treatment took effect.

The Landlord did not provide testimony regarding any other instance when entry to the rental property was denied.

The Landlord provided testimony regarding the Tenant's compliance with the instructions of the pest control personnel. I have not included that testimony in this Decision as the Tenant's compliance with the instructions of pest control personnel was not a reason to end tenancy listed in the details of cause section of the One Month Notice.

## Analysis

### Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under section 49 of the Act

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a)the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

Residential Tenancy Policy Guideline 2A explains the 'good faith' requirement. In

Gichuru v Palmar Properties Ltd., 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: Aarti Investments Ltd. v. Baumann, 2019 BCCA 165.

[Emphasis added]

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

Based on the testimony of both parties and the correspondence between them, I find that the Landlord served the Two Month Notice 6 days after the Agent informed the Landlord that the Tenant would not accept the illegal rent increase. To be clear, in accordance with section 5 of the Act, the Landlord is not permitted to contract out of this Act, which includes the legislated permitted rent increases. The rent increase sought by the Landlord did not comply with amount of permitted rent increases stated in section 43 of the Act as it was greater than 3.5% of the rent.

The Landlord testified that the refusal of the Tenant to pay the requested rent increase was not the reason alone for the service of the Two Month Notice. I find, on a balance of probabilities, that the refusal of the illegal rent increase was a reason that the Two Month Notice was served. While the primary reason the Two Month Notice was served may have been to allow his grand niece and nephew to move into his home, the refusal of the rent increase played a part. I find that the Landlord served the Two Month Notice in part due to a dishonest motive because the Landlord was trying to avoid the rent increase restrictions set out in the Act. I therefore find that the Landlord was not acting in good faith, and I cancel the Two Month Notice.

**One Month Notice to End Tenancy for Landlord's Use of Property (One Month Notice) under section 49 of the Act**

Based on the testimony of both parties, I find that the Tenant was served with the One Month Notice via registered mail on July 25, 2024. I find that the Tenant was deemed served with the One Month Notice on July 30, 2024, five days after its mailing, in accordance with sections 88 and 90 of the Act.

Section 29(2) of the Act states that a landlord may inspect a rental unit in accordance with section 29(1)(b) of the Act. Section 29(1)(b) of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless at

least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

I find that in accordance with section 29(2) of the Act, the Tenant was not permitted to deny entry to the Landlord on July 6, 2024, even if the Tenant thought the inspection was pointless.

Section 47(1)(d)(i) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Based on the testimony of the parties and the communications entered into evidence, I find that the Tenant denied entry to the rental unit on July 6, 2024 but permitted entry for July 21, 2024. I find that in denying entry on July 6, 2024 the Tenant interfered with the Landlord's rights under the Act. Nonetheless, I find that since entry was permitted later that that same month, the interference suffered by the Landlord was not significant and should not result in the Tenant's eviction. I find that the Landlord is not entitled to end the tenancy under section 47(1)(d)(i) of the Act. The Tenant is cautioned to comply with the Landlord's right of access to the rental unit set out in section 29 of the Act.

Section 47(1)(d)(iii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

It was undisputed that the latest bedbug treatment occurred on or around June 18, 2024 and would take some time to be effective. I find that the Landlord has not proved how the delay in inspecting the unit from July 6, 2024 to July 21, 2024 put the rental property at significant risk. I find that the Landlord has not proved, on a balance of probabilities, that the Tenant's delay in providing access to the rental unit put the landlord's property at significant risk. I find that the Landlord is not entitled to end the tenancy under section 47(1)(d)(ii) of the Act.

Section 47(1)(h) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Residential Tenancy Policy Guideline #8 states that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;

• that they believe the problem is a breach of a material term of the tenancy agreement;
• that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
• that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof.

I find that none of the communications entered into evidence from the Landlord to the Tenant state that the Landlord believes there is a breach of a material term and that the breach must be fixed by a deadline and that if the material breach is not fixed by the deadline, the Landlord will end the tenancy. The Landlord is therefore not entitled to end the tenancy under section 47(1)(h) of the Act.

In accordance with my above findings, I cancel the One Month Notice dated July 25, 2014. This tenancy will continue on in accordance with the Act.

**Recovery of the filing fee for this application from the Landlord under section 72 of the Act**

The Tenant filed 2 separate Applications for Dispute Resolution and paid 2 separate filing fees. I only grant the recovery of one of the filing fees to the Tenant as the Tenant should have filed one Application for Dispute Resolution and then amended that application; amendments do not require a filing fee. I find that the Tenant failed to mitigate her damages by filing two separate Applications for Dispute Resolution. In accordance with section 72 of the Act, I award the Tenant $100.00 for the recovery of the filing fee for the First Application for Dispute Resolution.

## Conclusion

The Two Month Notice dated July 10, 2024 is cancelled and of no force or effect.

The One Month Notice dated July 25, 2014 is cancelled and of no force or effect.

I grant the Tenant a Monetary Order in the amount of **$100.00** under the following terms:

| Monetary Issue | Granted Amount |
|---|---|
| authorization to recover the filing fee for this application from the Tenant under section 72 of the Act | $100.00 |

| | |
|---|---|
| **Total Amount** | **$100.00** |

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than $35,000.00. Monetary Orders that are more than $35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: September 12, 2024

Residential Tenancy Branch