

DECISION

Introduction

This hearing dealt with the following applications under the *Residential Tenancy Act* (the "Act").

On June 24, 2023, the Tenant applied for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act (*by amendment July 6, 2023*)
- cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) under section 49 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

On July 20, 2023, the Landlord applied for:

- an order of possession based on the One Month Notice issued June 27, 2023, under section 47 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Preliminary Matters

Based on Rule 2.3 of the Residential Tenancy Branch Rules of Procedure, claims made in an application must be related to each other, and Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find the issue of whether to uphold or cancel the Landlord's notices to end tenancy is the primary issue before me. I find the other claims listed on the Tenant's application are not sufficiently related to that question.

Therefore, I dismiss the Tenant's claim for compensation and an order requiring the Landlord to comply with the Act, with leave to reapply.

Issues

Is the tenancy at an end?

Is either party entitled to their filing fee?

Facts and Evidence

This tenancy began on October 1, 2020, with rent of \$1,650.00, due on the first of each month, and with a security deposit of \$825.00, and pet deposit of \$500.00.

The Landlord purchased the property sometime in February 2023, inheriting the tenancy agreement. The parties disagreed over the Landlord's proposed rent increase, potential changes to the services and facilities available to the Tenant, including a garden and storage, the boundaries of the Tenant's yard, and where the Tenant's dogs may roam.

On March 28, 2023, the Landlord presented the Tenant with an addendum to the tenancy agreement including a term stating the Landlord has "zero tolerance for ... abuse of property or persons/animals," and requesting renters deal with any messes created by their dogs and respect the Landlord's privacy in their yard. The Tenant returned the addendum, agreeing to clean up after their dogs, but crossing out the term related to zero tolerance for abuse of property, persons, or animals.

On May 25, 2023, DC and KF had an argument over the phone.

On May 29, 2023, the Landlord provided the Tenant with a Mutual Agreement to End Tenancy Form, saying it was provided to the Tenant at their own request. The parties did not execute the agreement.

On June 6, 2023, the Tenant filed for access to the space and services they believe they are entitled to under the tenancy agreement and requested to set conditions on the Landlord's right to enter the rental unit. The hearing for this application is booked for October 5, 2023, the file number is noted on the cover page of this decision. The Tenant says they served notice of this hearing to the Landlord on June 12, 2023.

On June 18, 2023, the Landlord issued a written warning to the Tenant, saying that the Tenant must not trespass on the Landlord's property without permission and that threats and abusive language will not be tolerated. The Landlord referred to the phone call between DC and KF that occurred on May 25, 2023.

On June 19, 2023, the Landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) stating that the Landlord's child RF would occupy the rental unit.

The Landlord provided a short statement from RF indicating their intention to occupy the rental unit due to its proximity to RF's workplace.

The Tenant acknowledges service by email of The Two Month Notice on June 19, 2023. The Tenant disputed the Two Month Notice on June 24, 2023, within the fifteen days required under section 49 of the Act.

On June 26, 2023, the parties attempted to complete an inspection of the rental unit at the Landlord's request. Tempers escalated, and a physical altercation took place between Tenant DC and the Landlord's witness LF.

The Landlord submitted a statement from LF. The Landlord says LF had to attend the hospital, and the Landlord submitted a photograph of LF's bruised elbow.

On June 27, 2023, the Landlord issued a One Month Notice to End Tenancy For Cause, (One Month Notice), citing the incident that occurred on June 26, 2023 and the previous written warning that was issued on June 18, 2023.

The Tenant acknowledges service of the One Month Notice by email on June 27, 2023, and the Tenant disputed it by amendment to this application on July 6, 2023, within ten days as required by section 47 of the Act.

Analysis

Is the tenancy at an end?

Since the Tenant failed to dispute each notice of eviction within the time allowed under the Act, the Landlord must prove they have sufficient reason to end the tenancy. I will first consider the Two Month Notice issued on June 19, 2023, and then the One Month Notice, issued on June 27, 2023.

The Two Month Notice

Under section 49(3) of the Act, the Landlord is permitted to end a tenancy if a close family member of the Landlord intends, in good faith, to occupy the rental unit.

Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states:

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.

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 Landlord says RF requested to move into the rental unit. The Landlord says RF currently lives nearby with their mother. The Landlord says RF would prefer to live in the rental unit for more privacy and to assist with taking care of the property because Landlord KF has health challenges.

The Tenant says the Landlord has ulterior motives to evict them to obtain higher rent and because of the conflict over the terms of the tenancy agreement. The Tenant says the rental unit has three bedrooms and would be more space than RF requires as a single person, and that the Landlord has space in their own basement where RF could reside if it were necessary for RF to live there to assist with the property.

I note that RF did not attend the hearing. Their short letter of intention to reside in the rental unit did not indicate why the rental unit is preferable to RF over their current living situation. The Landlord acknowledged that the distance to work from the rental unit is not significantly different than RF's current location. RF currently lives with their mother, and it has not apparently been necessary so far for RF to live on the rental property to assist with its maintenance. The Landlord's have not presented any evidence that RF has made any preparations towards moving into the rental unit.

I find that the Landlord's claim that RF desires private accommodations, taken on its own, is not sufficient to prove, on a balance of probabilities, that RF intends in good faith to occupy the rental unit, and that there is no ulterior motive.

Given that the Two Month Notice was issued amid ongoing negotiations and disagreements between the parties, I am unable to conclude that RF intends to occupy the rental unit in good faith, without any dishonest or ulterior motive on behalf of the Landlord.

The Landlord has not met the onus of proof required under section 49 of the Act. Accordingly, I order that the Two Month Notice is cancelled and of no force or effect.

The One Month Notice

The Landlord selected the following grounds as reasons to end the tenancy citing the June 26, 2023 inspection and the warning letter provided on June 18, 2023:

- *The Tenant or a person permitted on the property by the Tenant has*
 - i. *Significantly interfered with or unreasonably disturbed another occupant or the Landlord.*
 - ii. *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

I accept that on June 26, 2023, Tenant DC physically caused LF to fall from the chair, resulting in injury to LF's elbow. I accept that the Landlord issued a warning letter to the Tenant on June 18, 2023, stating that the Landlord will not tolerate trespass on their property or abusive language.

I must determine whether the Tenant's actions meet the high threshold of significance or seriousness as contemplated by section 47 of the Act or whether the Tenant has breached a material term of the tenancy agreement after the written warning provided on June 18, 2023.

June 26, 2023 – Inspection

The Landlord requested an inspection of the rental unit, apparently to establish a baseline to compare to an eventual move-out inspection.

The Landlord invited a witness, LF, age 80, who they believed to be experienced in conducting inspections. The Tenant invited their adult son, age 35, and the Tenant's adult brother to the rental unit to witness the inspection. The parties each attempted to record portions of the inspection. LF acknowledges in their statement that LF frequently reminded the Tenant they were being recorded.

The Tenant says LF commented on the décor in the rental unit. Tenant DC says they did not want an inventory of their home. The Tenant recalls that LF said they would ask the questions and DC would answer them. DC explained they had just endured six months of showings while the property was sold, and previous viewings had allowed strangers to go through their China cabinet. DC says they asked the Landlord KF and LF not to touch their belongings.

LF's statement indicates the reason for opening cupboards was to inspect whether any shelves were missing or whether hinges were working. I find LF's conduct unreasonable given the Tenant's obvious desire for privacy and dignity.

There is no dispute that Landlord KF physically interfered with DC's adult son during the inspection, either poking him in the chest or placing a hand on his chest. There was no injury to DC's son, and it is apparent that he did not feel physically threatened. However, this shows that the parties becoming more agitated as the inspection progressed. It is probable KF's actions escalated the situation between the parties.

Eventually, Tenant DC told the Landlord KF and LF to leave. LF sat down on the arm of the Tenant's chair and stated they would not be leaving. Tenant DC pushed LF from the arm of the chair. DC says their intention was to move LF to the seat of the chair to prevent LF from breaking the chair arm. However, LF slid from the chair onto the floor.

I understand that LF attended hospital and suffered injury, and I agree that neither party should physically interfere with the other. I note that Tenant DC says the arm of their couch had recently been broken when someone sat on it and DC was concerned for their property. DC admits to being angry and appears to regret their actions.

I accept that the Landlord viewed this incident as significant and serious. However, I find it would be highly prejudicial to end the tenancy based on this incident because I find that the Landlord provoked these actions from the Tenant by the way they conducted the inspection.

I find it unreasonable for the Landlord to request the Tenant to remove any wall hangings to determine how they were hung, or to open the Tenant's cupboards or cabinets. I accept the Tenant felt the inspection was an invasion of their privacy. I find the Landlord was not required to inspect the rental unit to that extent.

I find the Landlord was attempting to prematurely conduct a move out inspection, which should not be completed until after the Tenant has vacated the rental unit and removed their belongings.

Based on the evidence and testimony of the parties, the Landlord has not proven, on a balance of probabilities, that the Tenant's actions constituted sufficient cause to issue the One Month Notice on these grounds.

Breach of a material term

On June 18, 2023, the Landlord warned the Tenant against abusive language and trespass. The Landlord says the Tenant's failure to comply with a material term included swearing, direct threats, and elder abuse.

Residential Tenancy Branch Policy Guideline 8 defines a material term as one that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach 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. A party might not be found in breach of a material term if unaware of the problem.

Based on the addendum to the tenancy agreement in evidence, and the testimony of the Landlord, I do not find that the Landlord has established abusive language, or trespass over property boundary lines, as material terms.

If the Tenant has used abusive language or uttered threats, it is not appropriate to consider it as a breach of a material term. I will consider it under grounds of significant or serious interference or disturbance to the Landlord.

I accept that the Tenant likely swore or otherwise spoke in an aggressive manner to the Landlord on various occasions. However, I find both parties responsible for the nature of their communications. I do not find the Tenant's language sufficient to end the tenancy. The Landlord did not convince me that the Tenant has uttered threats with specific intent, but if that is the case, I advise the Landlord to report that to the police.

Furthermore, the parties do not appear to agree as to the boundaries of the rental property, and it would be unfair to end the tenancy based on trespass before the parties come to an understanding of what the boundary lines are.

The Landlord has not proven, on a balance of probabilities, that the Tenant's actions constituted a breach of a material term under the One Month Notice.

Therefore, under section 47 of the Act, I grant the Tenant's application to cancel the One Month Notice.

Is either party entitled to recover their filing fee?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover their \$100.00 filing fee under section 72 of the Act. I authorize the Tenant to deduct \$100.00 from a future rent payment in satisfaction of this award.

As the Landlord's claim was not successful, they must bear the cost of their own filing fee.

Conclusion

I grant the Tenant's application to cancel the Two Month Notice under section 49 of the Act. The Two Month Notice of June 19, 2023 is cancelled and is of no force or effect.

I grant the Tenant's application to cancel the One Month Notice under section 47 of the Act. The One Month Notice of June 27, 2023 is cancelled and is of no force or effect.

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

I grant the Tenant a monetary order for \$100.00 for the recovery of their filing fee under section 72 of the Act. I authorize the Tenant to **deduct \$100.00 from a future rent payment** in satisfaction of this award.

I dismiss the balance of the Tenant's application, with leave to reapply.

I dismiss the Landlord's application in its entirety, without leave to reapply.

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: September 13, 2023

Residential Tenancy Branch