

DECISION

Introduction

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

The Tenant applied:

- to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) issued June 22, 2023, under section 49 of the Act;
- and authorization to recover their filing fee under section 72 of the Act.

The Landlord applied:

- for an order of possession based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) issued June 22, 2023, under section 49 of the Act;
- and authorization to recover their filing fee under section 72 of the Act.

Issues to be Decided

Is the tenancy at an end?

Is either party entitled to recover their filing fee?

Facts and Analysis

The evidence submitted indicates the Tenancy began April 1, 2005, with a monthly rent of \$625.00, and a security deposit \$700.00. The current monthly rent remains at \$625.00, due on the first of each month.

The parties previously attended a hearing regarding a Two Month Notice issued by the Landlord on January 22, 2023 (the January Two Month Notice). The Arbitrator cancelled the January Two Month Notice because they found the Landlord had not demonstrated their good faith intention to occupy the rental unit. The decision was dated June 1, 2023.

During the hearing regarding the January Two Month Notice, the Landlord said they intended for their mother and mother-in-law to occupy the unit. Although they neglected to fill in that information on the notice itself, the Arbitrator found it reasonable to amend the January Two Month Notice to include that information.

The Tenant says the Landlord had requested to increase the rent a few times prior to serving the January Two Month Notice.

After receiving the January Two Month Notice, the Tenant offered to pay more rent and the Landlord accepted it. The Landlord said they accepted that rent on the understanding that the Tenant agreed to vacate the rental unit by June 2023.

The Landlord issued a subsequent Two Month Notice on June 23, 2023, again indicating their mother and mother-in-law would occupy the rental unit.

The Landlord says their mother BKS has medical issues and arthritis making it increasingly difficult for her to climb stairs. BKS provided a sworn affidavit explaining that her current bedroom is upstairs from her daily living space, and she would like to move into the rental unit which is a single level suite with level access to the backyard and front yard of the residence. BKS says the move will allow her to engage in her daily activities with greater ease and comfort.

BKS provided a note from a doctor confirming that she is medically unstable to go up and down the stairs. BKS also provided receipts for her attendance at physiotherapy.

The Landlord testified that their mother-in-law RA lives in a three-level dwelling with her daughter. Her daughter does not drive and cannot take her to her medical appointments. The Landlord KS drives RA to her medical appointments and provides care for RA and wishes to have RA move in with them for convenience. The Landlord says RA and BKS will share the two-bedroom rental unit.

Both BKS and RA attended the hearing. BKS testified that she is fine with moving into the rental unit. RA did not provide any testimony.

The Tenant says the Landlord could install a stair lift to assist their mother, and it is not necessary for her to occupy the rental unit. The Tenant says the Landlord is ending the tenancy because the Tenant was not able to pay higher rent.

The Landlord says money is not the issue and pointed to the fact that they have not increased the rent from the original amount that was set in 2005.

Is the tenancy at an end?

I find the Two Month Notice complies with section 52 of the Act. The Tenant disputed the Two Month Notice within the required time. So, the Landlord has the burden to prove that they have sufficient grounds to issue the Two Month Notice. 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.

The Tenant disputes that the Notice is being issued in good faith. "Good faith" 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. In disputes where a Tenant argues that the Landlord is not acting in good faith, the Tenant may substantiate that claim with evidence.

I find that the Tenant did not provide evidence to support their written and verbal testimony that the Landlord requested a rent increase prior to serving the first Two Month Notice.

In the absence of evidence as to any requests or what amount the Landlord requested the Tenant to pay, I am not inclined to make a finding that the Landlord requested increased rent prior to serving the initial Two Month Notice in January 2023.

The Tenant says the Landlord's mother could use a stair lift rather than occupying the rental unit. I find although the Landlord could likely install a stair lift to assist their mother, they are not required to do so. It is not unreasonable for them to decide that the rental unit is more suitable given that it provides one-level living with access to the bedroom, main living area and outside.

Based on their evidence and testimony and the attendance of BKS and RA at the hearing, I find the Landlord has demonstrated an honest intention for BKS and RA to move into the rental unit to suit their family's needs to care for their elderly parents and provide a place where their mothers can age-in-place.

Therefore, I dismiss the Tenant's application to cancel the Two Month Notice, without leave to reapply. As such, I grant the Landlord an order of possession for the rental unit under section 55(1) of the Act.

Given the length of this tenancy and the size of the rental unit, I understand the Tenant may require more time to vacate the rental unit. The Tenant says because of their financial position, they need time to apply to BC Housing or other housing support programs. Given the current rental market, they may have difficulty locating new accommodations in a short period of time.

I acknowledge the Landlord's perspective that the Tenant has had approximately 8 months notice of the Landlord's interest in ending the tenancy.

In order to balance the interests of both parties, I order the Tenant to deliver vacant possession of the rental unit to the Landlord no later than November 30, 2023 at 1:00pm.

I find this tenancy ended as a result of a Two Month Notice. Therefore, the Tenant maintains their rights to compensation under section 51 of the Act, including one month's rent compensation, and the ability to claim 12 month's rent compensation if the Landlord fails to occupy the rental unit as described in the Two Month Notice.

Is either party entitled to recover their filing fee?

As the Tenant was not successful in their claim, I dismiss their application to recover the filing fee, without leave to reapply.

I grant the Landlord's application to recover their filing fee under section 72 of the Act. I authorize the Landlord to deduct \$100.00 from the Tenant's security deposit in full satisfaction of that award.

Conclusion

The Tenant's application is dismissed in its entirety, without leave to reapply.

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

I grant the Landlord a monetary order for **\$100.00** for recovery of their filing fee under section 72 of the Act. I authorize the Landlord to deduct \$100.00 from the Tenant's security deposit in full satisfaction of that award.

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 29, 2023

Residential Tenancy Branch