



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Tenant's Applications 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 (the Two Month Notice) under section 49 of the Act
- Cancellation of the Landlord's 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice) under sections 46 and 55 of the Act
- An order to restrict or suspend the Landlords right of entry, under section 70.
- An order requiring the Landlords 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 Landlords under section 72 of the Act

This hearing dealt with the Landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- An order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent pursuant to sections 46 and 55 of the Act
- An order of possession under a Two Month Notice to End Tenancy for Landlord's use of property, pursuant to sections 49 and 55 of the Act
- A monetary order for unpaid rent
- an order for damages/compensation for the Landlord, pursuant to section 67 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Issues to be Decided

Should the Landlords' 10-Day Notice be cancelled? If not, are the Landlords entitled to a Monetary Order and Order of Possession?

Should the Landlords' Two Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Is the Landlord entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant or the Landlords entitled to recover the filing fee for this application?

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.

Evidence was provided showing that this tenancy began in January 2017, with a monthly rent of \$1,200.00, due on first day of the month, with a security deposit in the amount of \$600.00, which was split between three tenants. Three tenants lived in the rental unit; however, the two other tenants moved out and the Tenant is the only one still occupying the rental unit.

The Landlords served a Two Month Notice for Landlord's Use on the Tenant on June 13, 2023. The Two Month Notice indicated the Landlord's daughter SL (The "Landlords' Daughter") and son in law would be occupying the rental unit. The Tenant has disputed the Two Month Notice. The Landlords also served a 10-Day Notice for July unpaid rent on the Tenant on July 2, 2023. The Tenant has applied to dispute the 10-Day Notice.

Two Month Notice

The Landlords' Daughter advised that around March or April 2023, they decided to move into the rental unit with their husband. They currently living with the Landlords upstairs of the rental unit and would like to gain some more privacy but stay close to help the Landlords. Currently, 7 people live upstairs of the rental unit and there are 4 bedrooms. The Landlords' Daughter advised they discussed paying rent to the Landlords, and it would be similar to what the Tenant is currently paying. The Tenant was provided free rent for June 2023, to comply with the requirements of 1 month of compensation with the Two Month Notice.

The Tenant argued when they tried to pay rent in June 2023, the Landlords asked them to pay \$1,800.00 and when they would not agree the Tenant was advised they needed

to leave the rental unit because family members were moving in. Then the Tenant was served with the Two Month Notice that the Landlords' Daughter would be occupying the rental unit.

10-Day Notice

The Landlords' Daughter argued the Tenant has not paid rent for July, August or September 2023 and the Tenant owes \$3,600.00 in unpaid rent. The Tenant does not dispute that they have not paid rent but argued the Landlords would not accept anything less than \$1,800.00 so they have not paid rent.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Should the Landlords' Two Month Notice be cancelled? If not, are the Landlords 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. 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 June 26, 2023, and since I have found that the Two Month Notice was deemed served to the Tenant on June 13, 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. I find that the Landlords have the burden to prove that they have sufficient grounds to issue the Two Month Notice.

The Tenant disputed that the Two Month Notice is 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.

Since the Tenant has raised an issue of dishonest motive or purpose for ending the tenancy, the onus is on the Landlord to establish good faith.

The Tenant argued that the Landlords issued the Two Month Notice to increase rent; however, the Tenant has no supporting evidence of this since the discussion happened in person. Additionally, the Landlords' Daughter disputed that a rent increase to \$1,800.00 was ever asked for.

I find the Landlords' Daughter to be credible. Given the number of people occupying the upstairs of the rental unit, the need for privacy and the desire to stay close to the Landlords, I accept the testimony of the Landlords' Daughter that they intend to occupy the rental unit with their husband.

Based on the above, I dismiss the Tenant's application to cancel the Two Month Notice.

I find the form and content of the Two Month Notice is valid pursuant to section 52 of the Act. I find that pursuant to section 55(1) of the Act, the Landlords are entitled to an order of possession effective two days after service.

The Tenant was not required to pay rent for June 2023, so the Landlords have complied with section 51(1) of the Act and provided equivalent of one month's rent to the Tenant.

Should the Landlord's 10-Day Notice be Canceled?

Since I have ended the tenancy based on the Two Month Notice it is not necessary for me to consider if the 10-Day Notice should be cancelled. However, I will determine if the Tenant owes any unpaid rent to the Landlords.

Is the Landlord entitled to a Monetary Order for unpaid rent?

The Tenant did not dispute that they did not pay rent for July 2023, June 2023 or August 2023. The Tenant argued they previously had roommates and are not responsible for the full amount of rent. However, as stated in Policy Guideline 13, co-tenants are jointly and severally responsible for payment of rent when it is due. Which means If one tenant is unable to pay rent, the other tenant is responsible for the full amount of rent.

The Tenant also argued they did not pay because the Landlords wanted \$1,800.00. The Landlords' Daughter argued \$1,800.00 was never asked for. Additionally, the Tenant never tried to pay the rent amount of \$1,200.00 and admitted they did not pay rent for July, August and September 2023.

The Tenant has not presented any evidence to support a legal reason for withholding rent and I find that the 10- Day Notice complies with section 52 of the Act.

While the 10-Day Notice was issued for unpaid rent of July 2023, the Tenant continued to occupy the rental unit and failed to pay rent for August and September 2023 and the Tenant testified that they did not pay rent. Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent of \$3,600.00 representing July, August and September 2023.

Pursuant to section 72 of the Act, I authorize the Landlord to retain the security deposit of \$125.00 in partial satisfaction of the unpaid rent owed.

Are the Landlords entitled to a Monetary Order for compensation from the Tenant?

The Landlords also applied for compensation for monetary loss or money owed for the unpaid rent. Since I have dealt with unpaid rent above, it is not necessary to consider the unpaid rent under this claim. I dismiss this claim without leave to reapply.

Landlord Comply with the Act, Regulation or Tenancy Agreement and Restrict Landlords Right of Entry

Since I have ended this tenancy under the Two Month Notice, the following issues are dismissed without leave to reapply:

- An order to restrict or suspend the Landlords right of entry, under section 70.
- An order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Filing Fee

As the Tenant was not successful in these applications, the Tenant's applications for authorization to recover the filing fee for these applications from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

Since the Landlords were successful in this application, I authorize the Landlords to recover the filing fee from the Tenant, under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective two (2) days after service of this Order on the Tenant**. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Tenant's application to cancel the Two Month Notice is dismissed without leave to reapply.

I grant the Landlords a Monetary Order in the amount of **\$3,575.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$3,600.00
deduct the security deposit from the unpaid rent, pursuant to section 72 of the Act	- \$125.00
recover of the filing fee from the Tenants pursuant to section 72 of the Act	\$100.00
Total Amount	\$3,575.00

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Landlord is authorized to keep the \$125.00 security deposit as partial satisfaction of the unpaid rent, under section 72 of the Act.

The Tenant's application for cancellation of the 10-Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

The Tenant's application for an order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, without leave to reapply.

The Tenant's application for an order restricting the Landlords entry to the rental unit under section 70 of the Act is dismissed, without leave to reapply.

The Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

The Landlords' application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is granted.

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 14, 2023

Residential Tenancy Branch