

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's July 27, 2023, application under the *Residential Tenancy Act* (the Act) for:

- an Order of Possession based on the vacate clause in a fixed term tenancy agreement under sections 44(1)(b) and 55(2)(c) of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

and the Tenant's cross application filed August 22, 2023, seeking:

- to dispute a One Month Notice issued August 14, 2023
- to dispute a Two Month Notice issued August 28, 2023
- to request compensation under section 67 of the Act
- to reduce rent for repairs or services not provided
- to request repairs under section 32 of the Act
- to request the Landlord to provide services
- to set conditions on the Landlord's right to enter
- to request the Landlord to comply with the Act
- to recover their filing fee 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 the tenancy is ended is the primary issue before me. I find many of the claims listed on the Tenant's application are not sufficiently related to that question.

Therefore, I dismiss the Tenant's claims for compensation, reduced rent, repairs, services, conditions on the Landlord's right to enter, and an order requiring the Landlord to comply with the Act, with leave to reapply.

## **Issues to be Decided**

Is the tenancy at an end?

Is either party entitled to recover their filing fee under section 72 of the Act?

## **Facts and Analysis**

The tenancy originally began in June 2021, with a security deposit of \$765.00. The current monthly rent is \$1,582.96, due on the first of each month.

The current tenancy agreement is a fixed term beginning July 1, 2022, requiring the tenant to vacate the rental unit on July 31, 2023 so the Landlord can occupy the rental unit. Both parties initialed the vacate clause on the tenancy agreement.

The Tenant says the vacate clause is invalid because the reason they must vacate was not included on the tenancy agreement. The Landlord says they used the standard tenancy agreement form available at the time, as provided by the Residential Tenancy Branch, (RTB-1).

I find that the standard RTB-1 form was updated some time after June 28, 2022, when the parties signed it. The most recent version of the RTB-1 includes a space for the Landlord to indicate the reason the Tenant must vacate.

I find the Landlord was not required to update the existing tenancy agreement when the RTB-1 form was updated. I find the fixed term tenancy agreement and the vacate clause comply with section 44(1)(b) of the Act and section 13.1 of the Residential Tenancy Regulation.

The Tenant says they were forced to sign the fixed term agreement due to their financial circumstances and pressure from the Landlord. The Tenant submitted an email from the Landlord dated June 24, 2022, where the Landlord says if the Tenant does not agree to a fixed period, the Landlord will feel more pressure to sell the property or to move in.

Sale of the property would not necessarily mean an end to the tenancy unless the purchaser wanted to occupy the unit. If a purchaser, or the current Landlord, decided to move into the rental unit, the Tenant would have two month's notice to vacate the rental unit.

The Landlord says they were experiencing financial difficulty. They decided it was time for them to move into the rental unit. When they met with the Tenant on June 28, 2022, they brought a Two Month Notice to End Tenancy For Landlord's Use of Property (Two Month Notice) and a fixed term tenancy with a vacate clause.

The Landlord says they were trying to be generous by allowing the Tenant additional time under a fixed term agreement rather than issuing the Two Month Notice. During the

meeting on June 28, 2022, the Landlord offered to extend the fixed term tenancy agreement from one year to 13 months, and the Tenant agreed.

The Tenant chose to sign the fixed term tenancy agreement rather than face the prospect of being served with a Two Month Notice. I accept that the Tenant felt pressured by this choice.

However, I do not find the pressure felt by the Tenant rises to the level of duress, which would be required to negate their consent to the contract. Since duress renders the contract voidable, not void, the subsequent conduct of the party alleging duress may affect the right to avoid the transaction. If that party's conduct can be regarded as affirming, condoning, or ratifying the contract the plea of duress will fail. The Tenant has not presented evidence of their subsequent conduct that would confirm their claim of duress, and the Landlord has relied on their perceived agreement.

Whether the tenancy is ended by a Two Month Notice or by a vacate clause in a fixed term agreement, the Landlord must prove that they intend in good faith to occupy the rental unit. Therefore, if the Landlord can prove their good faith intention to occupy the rental unit, the Tenant must be held to their agreement to comply with the vacate clause.

According to Residential Tenancy Policy Guideline 2A, 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 that a party is acting honestly and intends to do 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 disputes where a Tenant argues that the Landlord is not acting in good faith, the Tenant may substantiate that claim with evidence. If the Landlord has previously ended tenancies without occupying the unit for six months or there are other comparable vacant rental units the Landlord could occupy instead, the Landlord may not be found to be acting in good faith. The Tenant has not presented evidence of these circumstances that would call the Landlord's intentions into question.

The Tenant indicated the Landlord may want to end the tenancy due disagreements between the parties. The Tenant says the Landlord has been attempting to force them out since the tenancy began by restricting their use of the deck for example. The Landlord says they have met their obligations as a landlord in a professional manner and the use of the deck was restricted due to safety concerns. In any event, the tenancy continued for two years after the use of the deck was restricted very near the beginning of the tenancy.

I find the Tenant has not presented any evidence to indicate the Landlord is not acting in good faith.

The Landlord testifies that they have moved from their previous location to the city where the rental unit is located. They have transferred to work in the city where the rental unit is located. Their child has recently come to live with them, and they agreed to provide their child proper accommodations, with a space for them to study and a yard for them to have a pet. They are currently staying in temporary accommodations surrounded by their moving boxes, while they wait for the Tenant to vacate the rental unit. The Landlord says they are prepared to move in as soon as possible.

Based on their testimony and evidence, I find the Landlord has demonstrated an honest intention to move into the rental unit. Therefore, I find the Landlord is entitled to an order of possession.

I find the tenancy is ended based on the vacate clause in the fixed term tenancy agreement signed by both parties on June 28, 2022.

The Tenant's claims to cancel the subsequent One Month Notice and Two Month Notice issued by the Landlord are now moot since the tenancy has ended. Therefore, I dismiss these claims without leave to reapply, pursuant to section 62(4)(b) of the Act.

I understand the Tenant may require more time to vacate the rental unit. The Tenant says because of their financial position, home based business, and the current rental market, they will have difficulty locating new accommodations.

I acknowledge the Landlord's perspective that the Tenant has had 17 month's notice of the Landlord's interest in ending the tenancy.

To balance the interests of both parties, I grant the Landlord an order of possession effective **on November 30, 2023, at 1:00pm** after service of the order on the Tenant.

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.

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

## **Conclusion**

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, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the Landlord to deduct \$100.00 from the Tenant's security deposit as satisfaction of their filing fee for this application under section 72 of the Act.

I dismiss the Tenant's claims for compensation, reduced rent, repairs, services, conditions on the Landlord's right to enter, and an order requiring the Landlord to comply with the Act, with leave to reapply

I dismiss the remainder Tenant's application, 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 Act.

Dated: November 7, 2023

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Residential Tenancy Branch