

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's two Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- 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
- 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 One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 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 the landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- An order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
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- An order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
- An order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Packages)**

I find that the Landlords were served served on August 17, 2023 and September 1, 2023 by registered mail and are duly served in accordance with the Act. A copy of the proof of service for both Proceeding Packages were provided.

## **Service of Evidence**

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlords in accordance with section 88 of the Act.

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## **Preliminary Matters**

- Added Additional Landlords to Application

Amended the application to include Landlord JC and Landlord CS.

- 10-Day Notice served September 4, 2023

The Landlords advised the Tenant's rent cheque for September 2023 was received 3 days after the 10-Day Notice was served. As such, the 10-Day Notice was cancelled since the Tenant paid rent within the time frame required to cancel the notice. It is not necessary for me to consider this issue as it is moot, therefore I dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply. The 10-Day Notice served September 4, 2023, is of no force or effect.

The following issues are dismissed with leave to reapply:

- 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 the landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- An order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
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*Residential Tenancy Branch Rules of Procedure*, Rule 2.3, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do

so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy for Cause and the Two Month Notice for Landlord's Use, I am exercising my discretion to dismiss these issues identified in the application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

## **Issues to be Decided**

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

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

## **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 around January 10, 2010, with a monthly rent of \$1,487.72, due on the first of the month and security deposit of \$700.00 paid at the beginning of the tenancy.

The Landlords served a Two Month Notice for Landlord's Use on July 28, 2023 and indicated the child of the landlord or landlord's spouse intended to occupy the rental unit (the "Two Month Notice"). Additionally, the Landlords served a One Month Notice for Cause August 17, 2023 and indicated the Tenant breached a material term of the tenancy agreement that was not corrected after written notice (the "One Month Notice"). The Tenant applied to dispute the Two Month Notice and One Month Notice.

### **Two Month Notice**

The Landlords advised Landlord TS's daughter (the "Landlord's Daughter") intended to occupy the rental unit with their partner. The Landlords advised this rental unit was always meant as a property for their children once they were older. Currently, the Landlord's Daughter lives at home with Landlord TS and their 2 adult siblings, their partner, and their sibling's partner. The Landlords argued the Landlord's Daughter has finished school, is working and would like to move out to live with their partner.

The Landlords advised they own one other rental property in Saskatoon and the Landlord's Daughter works in BC.

The Tenant advised they disputed the Two Month Notice because they don't think it was necessary for the Landlords to have served the Two Month Notice as they could have just had a conversation with them about wanting their child to move into the rental unit. The Tenant argued one of the Landlord's mentioned they own another rental unit in BC. I will note no evidence was submitted to support that there was any other rental property owned by the Landlords in BC.

### One Month Notice

The Landlord argued they served the One Month Notice because the Tenant changed the locks of the rental unit and did not provide them with a copy of the new key despite being given several written requests to do so. The Landlords advised they never gave written or verbal permission for the Tenant to change the locks and the Tenant still has not provided them with a copy of the new rental unit key. Emails were provided by the Landlords to support the written requests that were given.

The Tenant argued they have not given the Landlords a copy of the new rental unit key because they kept harassing them. The Tenant's position is that they intended to comply with the request, but they started to receive constant emails about providing copy of the key.

## **Analysis**

### **Should the Landlords' Two Month Notice be cancelled**

Section 49 of the Act provides for a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 of the Act provides 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notice was issued to the tenant in good faith and truly intends on doing what they said they would do on the Two Month Notice. As the Tenant disputed this notice on August 9, 2023, and since I have found that the Two Month Notice was served to the Tenant on July 28, 2023, I find the Tenant had until August 12, 2023 to dispute the Two Month Notice. The Tenant has disputed the Two Month Notice within the time required.

The Tenant disputes that the 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.

Given the testimony and evidence of both parties, I accept the evidence of the Landlords that the Landlord's Daughter intends to occupy the rental unit. While the Landlords own a rental property in Saskatoon, the Landlord's Daughter lives and works in BC so the property in Saskatoon is not a realistic option. Given the number of people living in Landlord TS's home, it is reasonable that the Landlord's Daughter would like to occupy the rental unit.

While the Tenant asserted the Landlords serving a Two Month Notice indicates bad faith, the legislation requires a landlord serve a Two Month Notice for Landlord's Use to obtain possession of their home. The Landlords were following the requirements of the Act and I find that this does not support that the Landlords have a bad faith intention. I do not find there is any evidence to support a bad faith intention.

For the above reasons, the Tenant's application for cancellation of the Two Month Notice is dismissed, without leave to reapply.

### **Are the Landlords entitled to an Order of Possession based on a Notice to End Tenancy?**

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Two Month Notice complies with section 52 of the Act.

Therefore, I find that the Landlords are entitled to an Order of Possession. Given how long the Tenant has lived in the rental unit and the fact that the Tenant has a pet, I will grant the Order of Possession for February 1, 2024.

### **Should the Landlords' One Month Notice be cancelled?**

Since I have already ended the tenancy based on the Two Month Notice, it is not necessary for me to consider the One Month Notice. I dismiss the Tenant's application to cancel the One Month Notice without leave to reapply.

### **Conclusion**

I grant an Order of Possession to the Landlords effective **1:00 PM on February 1, 2024 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 is entitled to one month's rent compensation as required under section 51(1) of the Act.

Section 31(3) of the Act states that a tenant must not change a lock or other means that gives access to the tenant's rental unit unless the landlord agrees in writing to, or the director has ordered, the change. As there has been no evidence submitted to support that the Landlords consented to or the director ordered the locks be changed, I order the Tenant provide the Landlords with a copy of the new rental unit key by December 22, 2023, pursuant to section 62(3) of the Act

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: December 7, 2023

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Residential Tenancy Branch