

DECISION

Introduction

This hearing dealt with the Tenant's and Landlord's Applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice).

The Landlord applied for an Order of Possession based on the Two Month Notice.

The Landlord acknowledged being served with the Tenant's hearing package in person on September 25, 2023. The Tenant acknowledged being served with the Landlord's hearing package by dropping off at the door of the rental unit on October 8, 2023. Neither party served any evidence for this hearing.

Issues to be decided

Should the Landlord's Two Month Notice be cancelled?

Is the Landlord entitled to an Order of Possession based on the Two Month Notice?

Facts and Analysis

This tenancy began in 2013, with a monthly rent of \$650.00 due the first day of each month.

The Landlord issued a Two Month Notice to the Tenant in person on September 15, 2023. The stated purpose for the Two Month Notice is that the rental unit will be occupied by the Landlord.

The Landlord testified that they plan to take the rental unit over as additional living space in the home. The Landlord had a minor stroke in Spring 2023 and has had trouble with stairs since then. The Landlord fell down the stairs in the home. The Landlord must use the stairs to get upstairs to the bathroom from their bedroom and living space on the main floor.

The Landlord plans to take over the rental unit so they can use the bathroom located on the main floor, which is currently a part of the rental unit. The Landlord plans to renovate the bathroom to make it more accessible given their health condition.

The Tenant testified as follows. The Landlord requested a rent increase from \$650.00 to \$1500.00 in August 2023. The Landlord told the Tenant they could get \$1800.00 per month rent for the rental unit in today's market. When the Tenant refused to pay the rent increase, the Landlord asked them to move out by September 1, 2023. The Tenant told the Landlord they needed to give a notice to end the tenancy and the Tenant would not be moving out. The Landlord gave the Tenant the Two Month Notice on September 15, 2023.

The Tenant says the Landlord is not acting in good faith, and gave the Two Month Notice so the Landlord could renovate and re-rent the rental unit for a much higher rate.

Should the Landlord's Two Month Notice be cancelled?

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" 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. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy.

When the issue of an ulterior motive or purpose for ending a tenancy is raised, the landlord has the burden to prove that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636).

I find that the Tenant's testimony about the rent increase request, and the timing of the Two Month Notice after the Tenant refused to pay the increase, call the Landlord's motive for issuing the Notice into question. The Landlord did not deny requesting a rent increase.

The Landlord did not provide any documentary evidence to support their claims. The Landlord testified about their health problems and cited this as the reason for ending the tenancy, but they did not provide documentary evidence of the medical issue. The Landlord testified that they plan to renovate the main floor bathroom for accessibility, but they did not provide any documentary evidence of renovation plans, quotes, or inquiries.

Based on the testimony of both parties, and on a balance of probabilities, I find the Landlord has not met their burden to prove they are acting in good faith to end this tenancy.

For these reasons, I grant the Tenant's application to cancel the Two Month Notice under sections 49 and 55 of the Act. The Two Month Notice dated September 14, 2023, is cancelled, and of no force or effect.

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

Is the Landlord entitled to an Order of Possession?

I find the Landlord has not proven on a balance of probabilities that they are acting in good faith to end this tenancy. The Landlord's Two Month Notice is cancelled.

For these reasons, the Landlord's application for an Order of Possession under sections 49 and 55 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application to cancel the Two Month Notice is granted.

The Landlord's application for an Order of Possession is dismissed, without leave to reapply.

The Two Month Notice dated September 14, 2023, is cancelled, and of no force or effect.

This tenancy continues until it is ended in accordance with 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: January 18, 2024

Residential Tenancy Branch