

DECISION

Introduction

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

- An order of possession under a Two Month Notice for Landlord's Use, pursuant to section 49
- Authorization to recover the filing fee for this application from the Tenants under section 72 of the Act

This hearing also dealt with the Tenants' Application 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 (Two Month Notice) under section 49 of the Act
- An order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act
- An order requiring the Landlord 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 Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that both parties acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

The Tenants advised they did not submit any evidence besides a copy of the Two Month Notice and a copy of the tenancy agreement.

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

Issues to be Decided

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

Is either party entitled to recover the filing fee for this application from the other?

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 on April 15, 2022, with a monthly rent of \$1,887.00, due on first day of the month, with a security deposit in the amount of \$925.00.

The Landlord served a Two Month Notice for Landlord's Use on September 30, 2023 and indicated the landlord or landlord's spouse would be occupying the rental unit (the "Two Month Notice"). The Landlords own a single family detached home with two units, the rental unit and the upstairs.

The Landlords' position is that Landlord DK lives upstairs of the rental unit and would like to reclaim the rental unit for their gym and home office. The Landlords' legal counsel AE (the Landlords' Counsel) argued the current space upstairs is not sufficient for Landlord DK as they are using their kitchen table as their office space and do not have enough room for their gym equipment. The Landlords each provided affidavits, which were submitted into evidence, to support they have good faith intentions and no ulterior motive.

The Tenants' position is that they currently are not disputing the Landlords are honest and will uphold their intention, but Tenant BR is living outside of BC and is unable to get back to move out of the rental unit for at least 4 to 6 months. Tenant BR advised they originally disputed the Two Month Notice because they received it shortly after some issues arose with the Landlords and thought it was retaliatory.

Analysis

Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord 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 Tenants disputed this notice on October 14, 2023, and since I have found that the Two Month Notice was served to the Tenants on

September 30, 2023, I find that the Tenants 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 Tenants main argument is that Tenant BR is unable to move out of the rental unit for 4 to 6 months because they are working out of the country. While I sympathize with the Tenants this is not a factor that is considered when determining whether the Two Month Notice was issued in good faith.

The Tenants also asserted that they originally disputed the Two Month Notice because they thought it was given in retaliation to some issues that arose between the parties, I find this to be merely speculative or conjecture. There is no documentary evidence to support this.

Based on the affidavits and submissions of both parties, I accept that Landlord DK would like to reclaim the rental unit as their own living space. As stated in Policy Guideline #2A if a landlord has rented out a rental unit in their house, a landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. Therefore, I find that the Landlords have demonstrated they have sufficient grounds to issue the Two Month Notice.

For the above reasons, the Tenants' application for cancellation of the Two Month Notice under section 49 of the Act is dismissed, without leave to reapply.

Is the Landlord 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 the current situation of Tenant BR and being out of the country, I grant an Order of Possession for April 6, 2024.

Are the Tenants entitled to recover the filing fee for this application from the Landlords?

As the Tenants were not successful in this application, the Tenants' application for authorization to recover the filing fee for this application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act. I authorize the Landlords to deduct \$100.00 from the Tenants security deposit in satisfaction of the filing fee.

Remainder of Tenants' Application

The following issues are dismissed without leave to reapply:

- An order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act
- An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Since I have found that the tenancy has ended the remainder of the Tenants' application is moot. Thus, I dismiss the remainder of the Tenants' application without leave to reapply.

Conclusion

I grant an Order of Possession to the Landlords **effective by 1:00 PM on April 6, 2024, after service of this Order on the Tenants.** Should the Tenants 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 entirety of the Tenants' application is dismissed, without leave to reapply.

The Landlords are authorized to deduct \$100.00 from the Tenants' security deposit in satisfaction of the recovery of the filing fee.

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: February 5, 2024

Residential Tenancy Branch