

DECISION

Introduction

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

- cancellation of the Landlord's Two Month Notices to End Tenancy for Landlord's Use of Property (Two Month Notice)
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided
- an order for the Landlord to make repairs to the rental unit
- an order to suspend or set conditions on the Landlord's right to enter the rental unit
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement
- authorization to recover the filing fee for this application from the Landlord

The Landlord acknowledged being served with the Tenant's hearing packages and evidence sent by registered mail December 15, 2023, and January 11, 2024. The Tenant acknowledged being served with the Landlord's evidence in person by courier on February 13, 2024.

Preliminary Matters

The Tenant's secondary application, file 910139930, incorrectly names the purchaser of the rental unit (the Purchaser) as the respondent. There is no existing tenancy between the Tenant and the Purchaser. The Landlord issued the notice to end tenancy, so this dispute is between the Tenant and Landlord. I have amended the application to correctly name the Landlord as the respondent in this matter. The Purchaser's testimony and evidence will be considered as it is relevant to my decision.

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

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, (\$9600.00)
- an order for the Landlord to make repairs to the rental unit

- an order to suspend or set conditions on the Landlord's right to enter the rental unit
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement

Aside from the Tenant's applications to cancel the Two Month Notices, and to recover the filing fees for these applications from the Landlord, 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.

The Landlord issued three Two Month Notice's in this matter.

Section 52 of the Act says a notice to end tenancy must be signed and dated by the landlord. I find the first Two Month Notice issued December 1, 2023, is defective as the Landlord failed to include the date the notice was signed.

Therefore, the Two Month Notice of December 1, 2023 is cancelled, and of no force or effect.

The Buyer's Notice to Vacate document issued with the second Two Month Notice, dated December 28, 2023, incorrectly lists the Purchaser's address as the rental unit address. The Landlord issued another Two Month Notice and Buyer's Notice to Vacate on January 31, 2024, with the corrected address listed for the Purchaser.

I find the Two Month Notice of January 31, 2024, replaces the Two Month Notice of December 28, 2023. Therefore, the Two Month Notice of December 28, 2023 is cancelled, and of no force or effect.

This decision will determine if the Two Month Notice of January 31, 2024 should be cancelled.

Issues to be Decided

Should the Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Facts and Analysis

The Landlord testified as follows. The Landlord and Purchaser entered a Contract of Purchase and Sale for the rental unit on December 28, 2023. The Purchaser gave the Landlord a Buyer's Notice to Seller for Vacant Possession because the Purchaser intends, in good faith, to move into the rental unit.

The Landlord provided the Contract of Purchase and Sale, and Buyers Notice for Vacant Possession, as evidence to support their claims.

The Purchaser attended the hearing and testified as follows. The Purchaser intends to move into the rental unit as soon as possible. The Purchaser is an architect and bought the rental unit because it is in close walking distance to their place of employment. The Purchaser provided their employment information as evidence to support their claim.

The Purchaser is currently renting an apartment and cannot afford to pay the mortgage for the rental unit and their current rent. The Purchaser bought the rental unit to be their primary residence.

The Purchaser's realtor attended the hearing and confirmed that the address provided on the Buyer's Notice is to the Purchaser's realtor's office. To the realtor's knowledge, the Purchaser is not employed in realty or construction.

The Tenant testified as follows. The Tenant believes the Purchaser does not intend to occupy the rental unit. The Tenant believes the Purchaser bought the rental unit to renovate and re-rent the unit. Based on the address provided in the Buyer's Notice, the Tenant claims the Purchaser is employed in realty or construction.

The Tenant claims the Purchaser never viewed the rental unit before buying it. The Tenant believes the purchaser may back out of the sale and forgo their \$1500.00 deposit. The Tenant states the rental unit is in disrepair, so they believe the Purchaser's true intention is to renovate.

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 a landlord may end a tenancy in respect of a rental unit if, the landlord enters into an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

The Landlord has the burden to prove that they have sufficient grounds to issue the Two Month Notice.

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.

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).

Based on the Landlord's evidence and testimony, I find the Landlord has proven that the conditions of the sale of the rental unit have been satisfied, and that the Purchaser asked the landlord, in writing, to give notice to end the tenancy because the Purchaser intends to occupy the rental unit.

Based on evidence and testimony of the Purchaser, and on a balance of probabilities, I find the Purchaser intends, in good faith, to occupy the rental unit. The Purchaser attended the hearing and gave affirmed testimony that they bought the rental unit to live in it. The Purchaser's testimony convinces me that the purchaser is employed as an architect at an office near the rental unit, and that they were motivated to buy the rental unit for its convenient location.

The Tenant's testimony does not persuade me that the Purchaser is acting dishonestly or avoiding obligations under the legislation. I am convinced by the Purchaser's testimony that they do not work in construction or realty as claimed by the Tenant. I am convinced by the Purchaser's testimony and evidence that they will move into and occupy the rental unit.

I find the Landlord has proven on a balance of probabilities that they have sufficient grounds to issue the Two Month Notice. I find the Purchaser has proven on a balance of probabilities that they are acting in good faith and intend to occupy the rental unit.

For these reasons, the Tenant's application to cancel the Two Month Notice of January 31, 2024, is dismissed, without leave to reapply.

I find the Two Month Notice meets the requirements for form and content under section 52 of the Act. Therefore, I find the Landlord is entitled to an Order of Possession under sections 49 and 55 of the Act.

As the Landlord has been granted an Order of Possession based on a Two Month Notice, I find the Tenant is entitled to a Monetary Order of \$1600.00, equivalent to one month of rent, as compensation for the landlord ending the tenancy under sections 49 and 51 of the Act.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

The Tenant was successful in their primary application, file 910127466. The Two Month Notice dated December 1, 2023, was cancelled because it is defective. Therefore, I find the Tenant is entitled to recover their filing fee of \$100.00 for this application from the Landlord, under section 72 of the Act.

The Tenant was not successful in their secondary application, file 910139930. The Landlord is granted an Order of Possession based on the Two Month Notice dated January 31, 2024. Therefore, the Tenant's application to recover their filing fee for this application under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord **effective on March 31, 2024, after the Tenant is served this Order**. The Landlord must serve this Order to the Tenant. The Tenant and anyone else occupying the rental unit must move out by **March 31, 2024, at 1:00pm**.

If the Tenant does not comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Tenant is reminded that the rental unit must be left clean and without damage in accordance with section 37 of the Act. The Landlord is reminded to schedule and complete a move out inspection in accordance with section 35 of the Act.

I grant the Tenant a Monetary Order of **\$1700.00** under sections 51 and 72 of the Act. The Tenant must serve this Order to the Landlord as soon as possible.

If the Landlord does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

Monetary Issue	Granted Amount
Compensation for the Landlord ending the tenancy under sections 49 and 51 of the Act	\$1600.00
Tenant's filing fee	\$100.00
Total Amount	\$1700.00

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: March 4, 2024

Residential Tenancy Branch