

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the Residential Tenancy Act (the "Act") for:

- an Order of Possession based on a 2 Month Notice to End Tenancy for Landlords Use of Property per Section 49 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing dealt with the Tenant's 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 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
- 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) and Evidence

The Tenant acknowledged service of the Proceeding Package and Landlord's evidence. No concerns were voiced with regards to the timing or manner of service.

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Preliminary Matters

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the **2 month notice to end tenancy for unpaid rent and the continuation of this tenancy** is not sufficiently related to any of the **tenant's** other claims to warrant that they be heard together.

The **tenant's** other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for **ending this tenancy as set out in the notice**. I exercise my discretion to dismiss all of the **tenant's** claims with leave to reapply except cancellation of the **notice to end tenancy** which will be decided upon.

Issues to be Decided

- Is the Landlord to be granted an Order of Possession based on a 2 Month Notice to End Tenancy?
- Is either party entitled to authorization to recover the filing fee for the applications under Section 72?

Background and Evidence

It is undisputed that the Tenancy began on August 1, 2018, with a Security Deposit of \$1250.00, held by the Landlord. The current rent is \$2100.00.

The Landlord submits that a Two Month Notice To End Tenancy For Landlord's Use (the "Notice") was sent to the Tenant on December 6, 2023 via Registered Mail. The Landlord provided a tracking number for this, which is recorded on the cover page of this decision.

The Landlord submitted a copy of the Notice into evidence. The Notice indicates that it was signed on December 6, 2023, and that the Tenant must move out by February 29, 2024. The Notice further indicates that "All conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The Notice also indicates that a copy of the purchaser's written request was included, this was confirmed by the Landlord in the hearing and a copy of the request was provided as evidence. The request was signed by the purchaser on November 26, 2023, and indicates that "All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied in accordance with the Purchase Agreement.", and that the purchase agreement was entered into on November 26, 2023.

It is undisputed that the December 6, 2023, Notice was returned to the Landlord as the Tenant did not pick it up. In regard to not picking up the December 6, 2023 Notice, the Tenant submits that she does not have a mail key and that the Landlord steals her mail, as evidence to this she submitted a lost drivers licence report with ICBC. The Tenant did not submit any other evidence of this other than her belief that this occurred. The Landlord denies having access to the Tenant's mailbox, indicating that they only have a

fob to use the elevator and a key for the front door. Furthermore, the Tenant submits that the Landlord agreed in writing to serve documents via posting on the door and sending a notification email; the Tenant submitted an email from her to the Landlord directing this.

It is undisputed that the Tenant received the Notice on January 15, 2024, via registered mail. The Tenant filed to dispute the Notice on January 21, 2024, 12 days after receiving the Notice.

The Tenant submits that the Landlord's notice was incorrect as it stated "Road" instead of "Drive".

The Tenant is disputing the notice as she submits that the Landlord is being fraudulent. As evidence to this statement, the Tenant submitted a newspaper article involving the Landlord's Agent in which they were accused of being fraudulent. Additionally, the Tenant submitted historical information from 2022 in which the Tenant disputed a Notice to End tenancy, and the Notice was found invalid.

The Landlord submitted an MLS "Property History Detail" which indicated that the rental unit was initially listed for sale on September 21, 2023, that there were two price reductions and one relisting before the rental unit status was changed to sold on December 11, 2023, at an amount below the listing price. The Tenant submitted several emails from the Landlord's agent which included notices that the rental unit would be shown; the emails included dates, times and realtors showing the unit.

The Tenant submitted a written-out conversation from August 22, 2023, between her and an agent for the Landlord. Within the conversation the agent states that the Landlord was not intending to sell the unit. A follow up email to the Tenant states that she has three options, as the Landlord was facing financial difficulties. The options were:

1. To end tenancy with mutual agreement and that the Tenant could ask for compensation and propose a suitable move out date.
2. Two- Month Notice to End Tenancy for the owners to move into the rental unit as they would sell their current residence.
3. Remain a tenant "Until Foreclosure or Owner-to- Live- In Buyer", in which case the rental unit would be sold either under foreclosure or a purchaser planning to move in.

An email on September 23, 2023, from the Landlord to the Tenant states that the rental unit was listed for sale.

The Tenant submits that the time between the sale and removal of subjects was too short to be true and that the Landlords and their Agents were being fraudulent. The Tenant submitted that the fact that vacancy of the rental unit was a subject to the sale is in contradiction of the Act.

The Tenant submitted several emails to and from the purchaser's realtor, in which the Tenant requested a significant amount of information regarding the sale contract and purchasers' information. While the realtor would not provide the requested information, within an email of February 7, 2024, she confirmed that the completion date was scheduled to be March 14, 2024, and the possession date March 15, 2024; the agent further states "Our contract included the Buyer notice to Seller for vacant possession, my client will live in the unit upon possession."

The Landlord testified that due to the pending dispute the closing date has been delayed to March 28, 2024, with a possession of April 1, 2024.

Analysis

Section 49 of the Act states that a Two Month Notice to End Tenancy for Landlords Possession must comply with section 52 and must contain the name and address of the purchaser who asked the landlord to give the notice. A Tenant may dispute the Notice by making an application for dispute resolution within 15 days after the date the tenant receives the notice. If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In reviewing the Notice dated December 6, 2023, I find that it complies with section 52 of the Act. Although the Notice references the address as "Road" instead of "Drive", I do not find that this materially changes the Notice and would be reasonably recognized as an error known to the respondent.

With regards to the service of the December 6, 2024, Notice, the Tenant submits that there was an agreement in writing that the Landlord would serve her via posting on the door and send a follow up email. The evidence submitted by the Tenant confirms that she made this demand, not that the Landlord agreed to this. Section 88 of the Act provides numerous methods of acceptable service, one of which is via Registered Mail; the Act does not indicate that the recipient needs to consent or can deny a method of service. Therefore, I find that the Landlord fulfilled the requirement set forth in Section 88 in the service of the Notice on December 6, 2023.

The Tenant submits that the Landlord is stealing her mail and that she does not have a key to the mailbox, which resulted in the failure to receive the December 6, 2023, Notice. The Tenant submitted record of a lost driver's license and stated that other packages had gone missing as evidence of this. I do not find that this to be compelling evidence to accept the nature of this accusation.

I also find fault in the Tenant's assertion that she is unable to access her mail as she does not have a mail key, the Tenant did not give any reason as to why she has been able to receive subsequent mail notices but failed to access this one notice.

Additionally, the Tenant did not submit any record that she had requested a new mail key through Canada Post.

I also note that on November 28, 2023, the Landlord emailed the Tenant stating that they had received an accepted offer with subjects on the property that they anticipated would be removed by December 5, 2023.

Based on the above, I find it is more likely than not that the Tenant was avoiding service of the Notice served on December 6, 2023. Given that it is undisputed that the date the Tenant received the actual Notice was January 15, 2024, I will not rely on this to dismiss the Tenant's application based on conclusive presumption; however, I will consider this in determining that the Landlord did not contravene any provisions set forth in the Act by applying for an Order of Possession on December 31, 2023, prior to the Tenant receiving the second notice.

In consideration of the evidence submitted by both parties, I find that the Landlord's evidence meets the requirements set forth in Section 49 of the Act to end tenancy for landlord's use of property when a rental unit is sold. Although the Tenant disputes that the conditions had not been removed as per the Act, because the condition of vacant possession remained, this is a patently unreasonable expectation and not in line with the intent of the requirements set forth by the Act. I do not find that any of the submissions put forth by the Tenant cause me to question that the listing, sale and expressed plan of the purchaser to reside at the rental unit is fraudulent in any way. As such, I find that the Landlord is entitled to an Order of Possession under section 49 of the Act.

Section 55(3) states that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order. In consideration of the circumstances, I find that the Landlord is entitled to an Order of Possession effective one week after service of the order.

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

As the Tenant was unsuccessful in their application, this application is dismissed without leave to reapply under section 72 of the *Act*.

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

As the Landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the *Act*.

Conclusion

I grant an Order of Possession to the Landlord **effective within one week of serving the Tenant**. Should the Tenant(s) 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 grant the Landlord authorization to retain \$100.00 of the tenant's security deposit in satisfaction of the Monetary Order requested under section 72 and 38 of the Act

The Tenant's application for cancellation of the Landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property under sections 49 and 55 of the Act is dismissed, without leave to reapply.

The Tenant's application to recover the filing fee for this application from the Landlord is dismissed, 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: March 8, 2024

Residential Tenancy Branch