

DECISION

Introduction

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
- 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 Landlord was served on January 27, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service

Service of Evidence

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

No evidence was received by the Residential Tenancy Branch from the Landlord.

Issues to be Decided

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

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

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 May 1, 2015, with a monthly rent of \$1,025.00, due on first day of the month, with a security deposit in the amount of \$895.00.

The Tenant was served with a Two Month Notice for Landlord's Use on December 28, 2023 and it indicated the landlord is a family corporation and a person owning voting shares in the corporation, or close family member of that person, intends in good faith to occupy the rental unit (the Two Month Notice). The Tenant disputed the Two Month Notice on January 5, 2024. This was a joined hearing as other tenants in the same building with the same Landlord (Unit 102) were also served a Two Month Notice for Landlord's Use (decision noted on cover page).

The Landlord's agent LC (the Landlord's Agent) advised they are the only shareholder of the Landlord and they intended to move into the rental unit with their spouse, their mother and their father. Upon further questioning the Landlord's Agent advised they and their wife intended to occupy the rental unit and their mother and father intended to occupy Unit 102. The Landlord Agent advised they put their house on the market; however, they changed their response and said "they haven't put it on the market" and "it will be put on the market April 3rd". When asked if the Landlord owned any other rental units the Landlord's Agent advised they only owned two rental units; however, upon further questioning the Landlord revealed they own a total of 4 rental units and they are all located on the same property. The Landlord's Agent advised the other two rental unit are occupied by tenants. Additionally, the Landlord's Agent was asked if these 4 rental units share a common entry and the Landlord's Agent advised they shared a common entry; however, after disagreement from the Tenant, the Landlord's Agent changed their response.

The Tenant's position is that the Landlord has served a Two Month Notice for Landlord's Use to all 4 of the rental units they own. Additionally, one of those rental units (Unit 104) became available during the time the Landlord served this Two Month Notice and the Landlord choose to re-rent the rental unit for higher rent rather than occupying the rental unit. The Landlord's Agent argued they did not want to occupy Unit 104 because it did not get enough sun. In response the Tenant argued Unit 104 gets more sunshine compared to the rental unit and Unit 102. The Tenant does not believe the Landlord has a good faith intention.

Analysis

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 Tenant disputed this notice on January 5, 2024, and since I have found that the Two Month Notice was served to the Tenant on December 28, 2023, I find that the Tenant has applied to dispute the Two Month Notice within the time frame allowed by section 49 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the Two Month Notice.

The tenants dispute 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.

Based on the testimony of the Landlord's Agent, I accept that the corporation is a family corporation as all the voting shares are owned by one individual, the Landlord's Agent.

I find that the Landlord has failed to establish they intend to occupy the rental unit in good faith. I find the following does not support a finding of good faith, the fact that 3 other rental units on the same property have all been served with Two Month Notices for Landlord's Use, that one of those units was available for the Landlord's Agent or parents to occupy and the Landlord re-rented for a higher price and the inconsistent testimony of the Landlord's Agent. The Landlord's Agent has provided inconsistent testimony throughout the hearing and kept changing their responses. For example, originally, the Landlord's Agent stated they only owed 2 rental units and then it came to light the Landlord owns 4 rental units on the same property. The Landlord's Agent also first stated their current home was listed for sale but then changed their response to it

would be listed for sale. Additionally, the Landlord has provided no documentary evidence to support that they intend to occupy the rental unit. The Landlord's Agent argued they have nowhere else to live and need to move into the rental unit; however, the Landlord's Agent advised their current home has not even been listed for sale.

Therefore, the Tenant's application is granted for cancellation of the Two Month Notice under section 49 of the Act.

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

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act. I authorize the Tenant to deduct \$100.00 from one future rent payment in satisfaction of the recovery of the filing fee.

Conclusion

The Tenant's application is granted for cancellation of the Two Month Notice under section 49 of the Act.

The Two Month Notice of December 28, 2023 is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Tenant is authorized to deduct \$100.00 from one future rent payment to recover 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: March 19, 2024

Residential Tenancy Branch