



DECISION

Introduction

This hearing dealt with Cross Applications including:

The Tenant's March 4, 2024, 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

The Landlord's March 16, 2024, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a Two Month Notice to End Tenancy because the Tenant Does Not Qualify for Subsidized Rental Unit (Two Month Notice) under sections 49.1 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties testified that they accepted service of each others' Notice of Dispute.

Service of Evidence

The parties testified that they accepted service of the others' evidence.

Preliminary Matters

I amended the name of the Landlord on the Tenants' application to include T.J.H. as a representative for the numbered company that currently owns the residential property. I also added the Purchaser S.A. as a party to the dispute.

I made these amendments under RTB Rule of Procedure 7.7 since the disputes are cross-applications and both Landlords were properly identified on the Landlord's application.

Issues to be Decided

- Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord 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.

The residential property is a two storey, seven-unit property.

This dispute is between the Landlord, the Purchaser and the Tenants in Unit 5.

There is a separate dispute referenced between the Landlord, the Purchaser and the Tenant in Unit 6.

Evidence was provided showing that this tenancy began on November 15, 2021, with a monthly rent of \$1,600.00, due on first day of the month, with a security deposit in the amount of \$800.00 and a \$800.00 pet damage deposit collected. The Tenant N.C. stated that their pet died during the tenancy which resulted in the return of the pet damage deposit and a \$100.00 reduction in monthly rent.

The parties agreed that the Tenants' current monthly rent is \$1,583.00 and that it is paid in full.

The Tenants were served an RTB-32, Two Month Notice to End Tenancy dated February 20, 2024, on February 26, 2024, in person to the door, by the Purchaser S.A.

The stated move-out date on this Notice is April 30, 2024.

The stated reason for move out on page two of the Notice, is that the Unit will be occupied by the "father or mother of the Landlord or Landlord's spouse".

The parties agreed that page 2 of the Notice also includes Purchaser Information with specifics for S.A. written out in the section of the Notice that states "complete only if issuing this Notice because the purchaser asked for a notice to be given."

Tenant N.C. stated that they now understand that the Purchaser S.A. is requesting to occupy a unit, and that the Purchaser's father G.A. is looking to occupy their own unit.

However, Tenant N.C. testified, that when the Notice was received on February 26, 2024, this was not understood.

Purchaser S.A. testified that they provided a copy of the contract to purchase the residential property, when they served the February 20, 2024, Notice on the Tenants.

Tenant N.C. testified that they Tenant have not yet received their equivalent One-Months compensation as they are entitled to under 51(1) of the Act.

Tenant N.C. testified that they believe the Notice was not issued in good faith because the Notice was only issued to the longest term tenants, paying lower rent.

Purchaser S.A. testified that, "if the property is fully rented at market rent of \$2,400.— there will only be a shortfall of \$4,000.00 in the expected monthly payment for their new mortgage of the property.

Counsel for the Landlord explained that there has been a delay in closing for the purchase of the residential property, because T.J.H as the representative for the numbered company, currently owes money to the financing company that will be offering the 60-month mortgage to the Purchaser S.A.

T.J.H testified that they are a director for the financial company, and that they recommended a sale of the residential property to the purchaser S.A. due to the Purchaser's local community presence and detailed history with the residential property.

The parties agreed that the Purchaser S.A. has been involved in the management of the property since the tenancy agreement for unit 5 started in 2020. Tenant N.C. testified that they always knew S.A. as a proxy for the numbered company that is the Landlord and current owner.

The Purchaser has a cleaning company. The Landlord provided documentary evidence to support their claim that the Purchaser's cleaning company has a long-term lease on Unit 1, which is currently occupied by S.A.

S.A. explained that they need to vacate Unit 1 so that it can be occupied by an employee of the cleaning company.

Counsel for the Landlord explained that the Purchaser's Father is currently occupying Unit 2 and making repairs. Witness X.H.K attended the hearing to testify that they are waiting to occupy Unit 2 on a long-term tenancy agreement.

Purchaser S.A. testified that Unit 2, Unit 3, and Unit 4 are all occupied by fixed term tenancies that expire in 2025, and that Unit 7 is rented to a local construction company that uses the unit to provide housing to workers.

Counsel for the Landlord referred to evidence provided to support the “bona fides” of the contract” to purchase the property and to justify the delay in closing of the sale.

Purchaser S.A. testified that they wish to have their father occupy Unit 5 because this unit contains the hydro meters for the property. Counsel for the Landlord explained that the Purchaser S.A. will occupy 6 unit because S.A. is due to give birth shortly, and it will be important to have their father live in the adjacent unit.

Tenant J.G. testified that it makes no sense for the Purchaser, a new baby and their Father, to occupy the two units between tenants who are known smokers in the property, that is, tenants in unit 4 and 7.

Tenant J.G. and N.C. also testified that the Landlords are only evicting the Tenants to raise the rents, and referred to witnesses at the hearing, and written correspondence regarding allegedly past instances of “bad faith” evictions at the residential property.

Tenant J.G. testified that they wonder why the Landlord has not done necessary improvements to the property, and that they doubt the ability of the Purchaser’s Father to provide quote, exemplary property management services.

Purchaser S.A. testified that their Father will pay rent to live in the Unit 6, they will contribute to the monthly mortgage payment, and the father will also provide services around the property to help the purchaser.

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.

The Tenants disputed the Notice on March 4, 2024, after testifying that they received the Notice on February 26, 2024, in person. 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.

There is a three-part test to for confirming the validity of a Notice to End Tenancy:

- 1) Service of the Notice
- 2) Form and content of the Notice
- 3) Grounds for issuing the Notice

Section 88 of the Act sets out how a Notice to End Tenancy can be served under the Act, and as seen in 88(a), service in person is an accepted means of service. I therefore find that the Tenants were served with a copy of the February 20, 2024, Notice on February 25, 2024, as required by the Act.

Regarding Form and Content of the Notice dated February 20, 2024, I find that it does not satisfy section 49 or 52 of the Act, because S.A. was not and is still not the “Landlord” for the purposes of the February 20, 2024.

Recent case law, *Hefzi v. Louw*, 2023 BCSC 994, (“Hefzi”) clarifies this distinction between definitions of “landlord”. As written by Justice Chan, in paragraph 23:

In contrast to other sections of the *Act* which use a broad definition of landlord, a landlord is narrowly defined under s. 49(1) and s. 49(3). Only a landlord who meets the definition under s. 49(1) can take back the property for landlord’s use under s. 49(3). For the purpose of s. 49, an agent or someone acting on behalf of the landlord cannot take back the property for own use; the home must be occupied by a landlord with at least 50% of a reversionary interest in the property exceeding three years.

Justice Chan writes further in paragraph 28:

In my view, an agent for the landlord can sign the s. 49 notice. However, s. 49(3) makes clear that it must be the landlord who must occupy the unit after the Tenants have vacated.

This means, that the reason of “the father or mother of the Landlord or Landlord’s spouse will occupy the unit” is incorrect, because as seen in the section specific Definition of Landlord under section 49 of the Act.

“landlord” means

(a)for the purposes of subsection (3), an individual who

(i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii)holds not less than 1/2 of the full reversionary interest, and

With the purchase contract for S.A. to purchase the residential property, set to close on August 20, 2024, if it closes, I find that S.A., was not a “landlord” under section 49 of the Act when the February 20, 2024, was served to the Tenants on February 26, 2024.

Regarding the final possible grounds for the Notice, that it is to be purchased by S.A. and S.A. is requesting vacant possession, I note that this option was not selected as a reason for the Notice at the top of section of page 2.

I refer to RTB Policy Guideline 50, regarding tenant entitlement to compensation for Notices issued under section 49 of the Act, where it is written on page 5 that:

Another purpose cannot be substituted for the purpose set out on the notice to end tenancy (or for obtaining the section 49.2 order) even if this other purpose would also have provided a valid reason for ending the tenancy.

In sum, I find that the Landlord satisfied Part 1 of the three-part test and accomplished service in accordance with the Act but did not satisfy Part 2 of the three-part test set out above for determining the validity of a Notice to End Tenancy.

I find that the February 20, 2024, Notice is not valid as a result.

I therefore find, as set out in RTB Policy Guideline 50, that the Tenants are not entitled to monetary compensation equivalent to one-months rent under 51(1) of the Act, because I have found that the Two Month Notice issued under section 49 of the Act, is not valid.

As I found the Landlord's Notice to end tenancy is not valid, I do not need to comment on Part 3 of the Test, which is the question of the Landlord's grounds for issuing the Notice, and whether the Notice was 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.

The Tenant's application 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 is successful.

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

The Two-Month Notice dated February 20, 2024, is cancelled and of no force or effect.

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

Is Either Party Entitled to Recover the Filing Fee?

The Landlord was not successful in this application. I dismiss their request to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed. I do not give leave to reapply.

The Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is successful. I Order that they are entitled to withhold \$100.00 from payment of rent on one occasion to satisfy this amount.

Conclusion

The Tenant's application 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 is successful.

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

The Two-Month Notice dated February 20, 2024, is cancelled and of no force or effect.

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

The Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is successful, I Order that they are entitled to withhold \$100.00 from payment of rent on one occasion to satisfy this amount.

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: May 16, 2024

Residential Tenancy Branch