DECISION

Introduction

This hearing dealt with cross applications including:

The Tenant's March 6, 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
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 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

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 Tenant's 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.

I used my discretion under RTB Rule of Procedure 3.17 to allow both parties to upload copies of relevant email correspondence related to the Notice of Inspection that was involved in the Purchaser S.A. accessing the Tenant's rental unit on February 24, 2024, because the Purchaser served the RTB-32 Two Month Notice to the Tenant on that day by leaving it on their table, a conspicuous spot.

I also used my discretion under RTB Rule of Procedure 2.3 and 6.2 to sever the following items from the Tenant's application because I determined that they are unrelated to the Tenant's request to challenge the Two-Month Notice to End Tenancy:

- I want compensation for my monetary loss or other money owed in the amount of $20,000.00
- Is the Tenant entitled to an Order requiring the Landlord to comply with the Act, regulation and/or tenancy agreement?
- I want to suspend or set conditions on the landlord's right to enter the rental unit or site

The Tenant has leave to reapply for these items.

I confirmed for the parties that I also heard the related dispute regarding the service of an identical two month notice on the Tenants of Unit 5 in the residential property. I informed the parties that I would be hearing the two disputes independently as separate files.

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 Tenant in Unit 6.

There is a separate dispute between the Landlord, the Purchaser and the Tenants in Unit 5.

Evidence was provided showing that this tenancy began April 2021, with a monthly rent of $1,800.00, due on first day of the month, with a security deposit in the amount of $900.00. A copy of the original tenancy agreement was provided as evidence.

The parties agreed that monthly rent is currently $1,900.26 and paid in full.

Tenant M.M. testified that there was confusion, and back and forth, at the start of the tenancy regarding the actual monthly rate of rent, and indicated that rates of rent are calculated based on number of tenants in a unit.

The Tenant was served an RTB-32, Two Month Notice to End Tenancy dated February 20, 2024, on February 24, 2024, by Purchaser S.A. leaving it on the table of their rental unit.

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 “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 M.M. testified that they did not know when they received the Notice, that S.A. is the Purchaser of the residential property. M.M. testified that if you look at the email records provided, M.M. understood the purchaser to be an unrelated third party.

M.M. also expressed their confusion with the “landlord or landlord’s spouse” taking occupancy, stating that a numbered company, the current owner of the residential property, cannot have a spouse, and cannot occupy a rental unit.

Tenant M.M. testified that the Notice dated February 20, 2024, was not validly served because they did not give consent to S.A. who they referred to as the “Building Manager”, to access the rental unit for the purpose of serving documents. M.M. stated that they only consented to access, despite the lack of 24 hours’ Notice, so that the 3rd party purchasers could inspect the Unit.

Purchaser S.A. testified that they served the Tenant M.M. with Notice of Inspection as required by the Act, because the Notice of Inspection was sent by Email, and the Tenant M.M. consents to service by Email as shown in the written tenancy agreement.

Assistant to Counsel for the Landlord, confirmed during the hearing that they uploaded copies of emails back and forth between Purchaser S.A. and Tenant M.M. between February 23, and February 24, 2024.

S.A. referred to emails submitted to testify that they provided email Notice at 8:53AM on February 23, that an inspection would be occurring in Unit 6 at 9:30am the following day. S.A. referred to the email response at 12:12 PM from Tenant M.M.

S.A. testified that they served a paper copy of the RTB-32 to Tenant M.M. by leaving it on the kitchen table on February 24, 2024, and that they also provided the Tenant M.M. with a written letter of intent, as well as the contract of purchase and sale of the property by email.

Tenant M.M. testified that the Landlords are acting in bad faith for multiple reasons.

Tenant M.M. referred to the text of the purchase agreement for the sale of the residential property and stated that serving a Notice to end tenancy with an effective date of April 30, 2024, is not valid because the purchase agreement is not set to close until August 20, 2024, if it closes at all.

Tenant M.M. also referred to email records from the J.T.H. as the representative for the numbered company, to S.A. and how J.T.H. writes on February 20, 2024, that they "waive all subject conditions by email". Tenant M.M. referred to the Landlord's evidence and testified that there is nothing formal, in the purchase contract to show that all subject conditions have been waived.

Tenant M.M. stated that the involvement of multiple corporations in the purchase of the property is not appropriate, and that based on M.M.s review of all documentary evidence provided, they are not even certain that the property will be purchased by S.A.

Counsel for the Numbered Company stated that there is a close and long-standing relationship between T.J.H and S.A. and so this means that their contract is not formal and that it is fully legal for T.J.H. to have waived conditions by email.

Counsel for the Numbered Company, referred to the Landlord's evidence submitted to confirm that:

- T.J.H. is a director of the financing company that has agreed to provide the mortgage necessary of S.A. to purchase the residential property.
- The financing company is a legal, established financing company.
- The sale of the residential property to S.A. is closing August 2024 because T.J.H. owes money to the financing company.
- This means the financing company does not currently have the money necessary to fund S.A.s purchase of the property.
- T.J.H. has the money as shown in evidence of a sizable investment with a big bank where T.J.H is said to be enjoying a time-limited promotional interest rate.
- T.J.H. will repay the money necessary for S.A.'s purchase of the residential property, to the financing company once this promotional interest rate ends.

T.J.H. testified that they live elsewhere and so they are selling the residential property to S.A. significantly below market value at $1.23 million because S.A. is a local.

T.J.H. also testified that the numbered company previously received an offer to purchase the 7-unit residential property, for $2+ million dollars from an foreign investor who wanted to demolish the property and build condos.

M.M. testified that there was a prior effort by the Landlord T.J.H to evict tenants related to this purchase offer from the foreign investor. M.M. stated that money was offered to tenants to leave, which some tenants did, even though the purchase never completed.

S.A. testified that they have been living in Unit 1 since July 2023.

The parties agreed that S.A. has a long term history with the residential property and that S.A. has been serving as the Building Manager for T.J.H and the numbered company.

S.A. stated that they need to take occupancy of unit 6 because they have a signed contract with M. M. to take occupancy of Unit 1 which S.A. currently occupies. Counsel for the Numbered Company referred to evidence submitted of M.M.s Canadian work permit and contract to work as an employee of S.A.'s company, indicating that housing is a condition of this employment arrangement.

M.M. provided sworn testimony through their Daughter and Translator, H.B. to confirm M.M. is currently living out of town, waiting for Unit 1 to become available so that they can begin working for S.A.'s company.

S.A. testified that they need to take occupancy of Unit 6, because their father G.A. will be taking occupancy of Unit 5.

G.A. spoke briefly of the configuration of Unit 5 and how the Landlord's are required to give Notice of Inspection to Tenants of Unit 5 when access is needed to the hydro meters.

G.A. stated that incorrect testimony was provided during the May 13, 2024, hearing regarding Unit 5, and sought to clarify for the record, that the Hydro Meters are not in a separate closed off room, but that they form part of the rental unit for Unit 5, as is evidenced by the tenants of Unit 5 using the space for storage.

N.C. who is a named tenant of Unit 5, attended the May 14, 2024, hearing for Unit 6 as a witness. N.C. was asked to comment on the statement from G.A. and agreed that the tenants in Unit 5 use the space for storage as needed.

S.A. testified that they are giving birth shortly, and that they need to live close with their Father for support, which can be accomplished because the Units 5 and Unit 6 are next door, with shared patio space.

Tenant M.M. objected to the claim that patio space was shared.

S.A. spoke to the Mortgage Letter provided as evidence regarding their purchase of the residential property and how it requires a monthly repayment of $20,500.00. S.A. testified to the following:

- Current revenues for the residential property are $15,000.00
- Current revenues will increase if each of the 7 Units pays market rent of $2,400.00
- S.A. and their Father G.A. will both pay market rent
- G.A. will also help S.A. cover the shortfall in monthly mortgage payments
- G.A. will help offset monthly expenses at the residential property
- S.A. has a busy local business that will also cover any shortfalls in monthly payments

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 Tenant disputed the Notice on March 6, 2024, after receiving the Notice on February 24, 2024. 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(g), attaching a unit to a “conspicuous place” is a valid means of service. The Purchaser S.A. testified that they served the Two-Month Notice dated February 20, 2024, by leaving it on the Tenant’s kitchen table, a “conspicuous place”.

The Tenant M.M. stated that this did not constitute valid service under the Act.

I reviewed the parties’ proof of email correspondence between S.A. and M.M. on February 23, and February 24, 2024. In doing so, I find that:

- S.A. communicated a need to access for purpose of inspection
- S.A. did not communicate a need to access for purpose of service

- M.M. repeatedly responded in writing, with a demand that any and all Notices be printed and posted on their door

However, S.A. disregarded these instructions and reminded M.M. that they consented to service by email as seen in clause 50 of M.M.s tenancy agreement which reads as follows:

NOTICES

50. The Tenant(s) agrees that any notice given by the Landlord or agents relating to this lease may be given by any one or more of the following methods, each of which shall be equally sufficient:
    a. by personal delivery of the notice to any one or more of the persons signing this lease as Tenant(s) or any person residing in the premises who is at least 18 years old;
    b. by posting the notice on the main entrance door of the premises;
    c. by sending notice via email to the address provided to Landlord or Landlord's agent at time of move in; or
    d. by sending notice via text message to the cell phone number provided to Landlord or agent via Tenant information form.

Based on my review of the Landlord's own terms, I find that S.A.'s service to the Tenant by leaving a copy of the Notice on the kitchen table after accessing the rental unit with less than 24 hours' Notice, the minimum required by section 29 of the Act, does not satisfy section 88(g) of the Act, which read as follows:

> All records, other than those referred to in section 89 [special rules for certain records], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
>
> (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

I make this finding because, as shown in section 44 of the Regulations:

> 44 A document given or served by email in accordance with section 43, unless earlier received, is deemed to be received on the third day after it is emailed.

As shown in the Landlord's own correspondence, the Tenant M.M. responded to the original 8:53AM email at 12:12PM which is less than 24 hours before S.A.'s inspection of Unit 6 commenced at 9:30am on February 24. 2024.

Furthermore, I find that the Landlord's clause 50 does not satisfy section 43 of the Regulations, for service by email because this clause does not name the specific emails to be used for service by either party for the purpose of servicing documents by emails.

In sum, I find that the Landlords failed to serve the Tenant M.M. with a copy of the February 20, 2024, Notice as required by the Act.

I find that the Landlord failed to satisfy Part 1 of the three-part test.

Regarding Part 2, and the 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 as noted by Tenant M.M., S.A. was not and is still not the lLandlord" for the purposes of the February 20, 2024, Notice.

Recent case law, Hefzi v. Louw, 2023 BCSC 994, ("Hefzi") clarifies this distinction between definitions of landlord in the Act. 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.

I therefore find that page two of the February 20, 2024, Notice is filled out incorrectly, regarding grounds for the Notice, as needed for 52(d) of the Act, because as Tenant M.M. testified, the Numbered Company that owns the property, does not have a spouse, and cannot occupy the unit.

Likewise, I find that S.A. does not qualify as a Landlord for the purposes of section 49 of the Act, seeking to take possession of a Unit, because, this section of the Act, includes the following specific definition of Landlord:

> "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 given to the Tenant M.M. on February 24, 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 the page.

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 did not satisfy Part 1, or Part 2 of the three-part test for considering 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 Tenant is 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 the Tenant entitled to an Order requiring the Landlord to comply with the Act, regulation and/or tenancy agreement

Based on my findings above regarding S.A.'s failure to serve as required by the Act, I use my discretion under the Act to consider the Tenant's request for an Order requiring compliance from the Landlord.

I issue this Order despite comments during the hearing that I would be severing all Tenant requests other than the request to Challenge the Two Month Notice from the Tenant's applicaion.

I Order under 71(2)(a) of the Act, that the Landlord (as defined in section 1 of the Act) communicate only in writing with the Tenant M.M. going forward, by physically printing and posting all communication items and posting them to M.M.s door.

For clarity, this order for Service to the Door of all written communications includes any Notices of Dispute Resolution that may be served to the Tenant M.M. in the future, as permitted by 89(2)(d).

Furthermore, as shown in 90(c) of the Act, I remind both parties that documents served to M.M. in this manner, will be deemed received by M.M. 3 days after being posted to the door, unless M.M. acknowledges earlier receipt of service.

As an example, this means, going forward, that if and when the Landlord wants to inspect Unit 6, they need to print and post Notice of Inspection to the door of Unit 6, at least 4 days before the scheduled inspection is to occur.

Lastly, I order under section 70(1) of the Act, that Unit 6 can only be accessed by the Landlord going forward, in strict accordance with section 29 of 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, without 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.

I Order under 71(2)(a) of the Act, that the Landlord (as defined in section 1 of the Act) communicate only in writing with the Tenant M.M. going forward, by physically printing and posting all communication items and posting them to M.M.s door.

I Order under section 70(1) of the Act, that Unit 6 can only be accessed by the Landlord, going forward in strict accordance with section 29 of 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