

DECISION

Introduction

This hearing dealt with the Tenant's two Applications 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
- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 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
- 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 the Landlords' daughter YB (the Landlords' Daughter) acknowledged the Landlords were served with the Proceeding Package for both disputes on April 18, 2024 and April 30, 2024.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlords in accordance with section 88 of the Act. The Landlords' Daughter advised they were originally unable to view the digital evidence provided by the Tenant but was able to access the digital evidence prior to this hearing. The Landlords' Daughter also advised they never received an RTB 43 (Digital Evidence Details) form with the digital evidence; however, the Landlords' Daughter did not take issue with the evidence being included. As the Landlord has taken no issue with the evidence being included, I have considered the Tenant's evidence.

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

Preliminary Matters

The following issue is dismissed with leave to reapply:

- An order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Two Month Notice for Landlord's Use and the One Month Notice for Cause, I am exercising my discretion to dismiss the issue identified above with leave to reapply as this matter is not significantly related. Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

Should the Landlords' One Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

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

Is the Tenant entitled to recover the filing fees for these applications from the Landlords?

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 July 20, 2022, with a monthly rent of \$1,300.00, due on first day of the month, with a security deposit in the amount of \$650.00. The Landlord and Landlords' Daughter live in a portion of the home, where the rental unit is located.

The Tenant is disputing a Two Month Notice for Landlord's Use served March 26, 2024, which indicated the Landlords' child intended to occupy the rental unit (the Two Month Notice) and disputing a One Month Notice for Cause served April 8, 2024, which indicated the reasons for cause as the Tenant has not done required repairs of damage to the unit/property and a breach of a material term has was not corrected within a reasonable time after written notice (the One Month Notice).

Two Month Notice

The Landlords' position is that the Landlords' Daughter wants to move into the rental unit to gain their own indivual space and to have room for a home office. The parties advised at the beginning of the tenancy the Landlords' Daughter lived in a portion of the home, by themselves, but in February 2024 the Landlords moved from overseas. The Landlords' Daughter argued they are sharing 3 bedrooms with the Landlords, and they would like to have their own space which is sperate from the Landlords. The Landlords' Daughter advised they plan on moving to the Tenant's rental unit, and Landlord XL would continue living in the other portion and Landlord HB would occupy the other portion 6 months of the year.

The Tenant's position is that the Landlords have changed what they plan on doing with the rental unit several times and only served the Two Month Notice because the Tenant refused a rent increase. The Tenant's spouse KZ (the Tenant's Spouse) argued that on February 26, 2024, the Landlord advised them the Landlord's Daughter was moving to China and the Landlords intended to rent the entire property and planned on dividing the home into 3 units to maximize profits. The Tenant's Spouse advised they were asked to by the Landlords' new agent to increase rent. A copy of the text message with the request was provided as evidence. I will note the text message was translated to English but was not professionally translated. The translated message from the Landlords' new agent stated "I have checked the rent price. The whole rent downstairs is between \$2,600.00 and \$2,800.00 and the one you rent now is between \$1,700.00 and \$1,800.00. Let's meet and talk about the details tomorrow". The Tenant's Spouse advised they declined the rent increase. The Tenant argued then on March 19, 2024, they were advised the Landlords' Daughter would be moving into the rental unit and the remainder of the home would be rented. The Tenant argued they were given the Two Month Notice on March 26, 2024, after they refused the rent increase.

One Month Notice

Damage not Repaired

The Landlords' position is that the Tenant has leaked oil on the ground and has not cleaned the oil stain. The Landlord's Daughter argued three warning letters were sent to the Tenant on March 26, 2024, March 30, 2024 and April 8, 2024, but the oil stain has not been cleaned. The Landlord's Daughter argued they know the oil stain was caused by the Tenant because before the Tenant moved in there were no oil stains and they found the oil stains under where the Tenant had their cars parked. Photographs were provided from before the tenancy and during the tenancy; however, there are no dates on the photographs.

The Tenant's position is that the oil stains were not caused by them and that the warning letter was only given after the Tenant refused the rent increase.

Breach of Material Term

The Landlords' position is that the Tenant has been doing business on the property including fixing cars, selling cars and has stored tools and oil cans. The Landlords' Daughter argued it is a safety concern and they are not allowed to conduct business on the property. The Landlords' Daughter argued that strangers have come to the property because of the Tenant's alleged business. The Landlord's Daughter advised the last time they saw the Tenant conducting business on the property was April 14, 2024, when the Tenant sold a car. As stated above the warning letters were given March 26, 2024, March 30, 2024, and April 8, 2024. The Landlord's Daughter argued the oil cans and tools are still being stored on the property and the oil cans are a hazard.

The Tenant's position is that they are not doing any business activity on the property, and they only sold their personal car and the only car ever fixed on the property was the car of the Landlords' Daughter after they requested the Tenant help change their oil and fix their bumper. Text messages were provided showing the Landlord's Daughter requesting the assistance with their car. The Tenant argued that a large amount of the items being stored belong to the previous tenant, but they do have some tools they store at the rental unit. The Tenant also advised there are 3 cans of car oil at the property.

Analysis

Should the Landlords' Two Month Notice be cancelled? If not, are the Landlords 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. As the Tenant disputed this notice on April 7, 2024, and since I have found that the Two Month Notice was served to the Tenant on March 26, 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 Landlords have the burden to prove that they have sufficient grounds to issue the Two Month Notice.

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 disputes that the Two Month 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.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlords have failed to prove that they have sufficient cause to issue the Two Month Notice to the Tenant and obtain an end to this tenancy.

The Landlords' Daughter argued they would like to occupy the rental unit to gain some independence. On the other hand, the Tenant argued the Two Month Notice was issued because the Tenant refused a rent increase. I have taken into consideration that the text message provided by the Tenant about the rent increase was not professionally translated to English; however, I find that the Landlords have also not provided any evidence to contradict that this rent increase conversation took place. I find the timing of the rent increase request and the Two Month Notice calls into question the intention of the Landlords. Both parties have presented equally probable scenarios of why the Two

Month Notice was given; however, the onus falls on the Landlords to shift the balance in their favour. I find the Landlords did not meet the burden to establish they plan on occupying the rental unit in good faith rather than to increase rent.

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

Should the Landlords' One Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenant disputed this notice on April 14, 2024 and since I have found that the One Month Notice was served to the Tenant on April 8, 2024, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlords have the burden to prove that they have sufficient grounds to issue the One Month Notice.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlords have failed to prove that they have sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

Damage not Repaired

I find that insufficient evidence was provided to support that the oil stains were caused by the Tenant. While photographs were provided by the Landlord there are no date stamps on the photographs, and I find I am unable to determine when those photographs were taken. As such, I find that the Landlords have failed to establish this reason for cause.

Breach of Material Term

I find the Landlords have provided insufficient evidence to establish that the Tenant has breached a material term of the tenancy agreement. The Landlords have alleged the Tenant is running a business from the property; however, there is nothing in the tenancy agreement that prohibits this and there is no evidence to support the Tenant is running

a business. The Tenant disputed running a business at the property and provided evidence to show they sold their personal car and performed car repairs only for the Landlord's daughter after they have requested this. I do not find that either of these actions are prohibited by the tenancy agreement. Additionally, I do not find that the storage of tools or car oil is a breach of the tenancy agreement. Furthermore, there is no evidence to support the claim that strangers have attended the property because of the alleged business. I find that the evidence supports the Tenant sold their car and the individual who bought the car came to the property. Which I find is not a breach of the tenancy agreement. Based on the above, I find that the Landlords have not provided sufficient evidence to establish the Tenant has breached a material term of the tenancy agreement.

Based on the above, I find the Landlords have failed to prove that they have sufficient cause to issue the One Month Notice to the Tenant. Therefore, the Tenant's application is granted for cancellation of the One Month Notice under section 47 of the Act.

Is the Tenant entitled to recover the filing fee for their two applications from the Landlord?

As the Tenant was successful in their applications, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for each application under section 72 of the Act. The Tenant is authorized to deduct \$200.00 from one future rent payment to recover the filing fees.

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 March 26, 2024 is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Tenant's application is granted for cancellation of the One Month Notice under section 47 of the Act.

The One Month Notice of April 8, 2024 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 \$200.00 from one future rent payment in satisfaction of the recovery of the filing fees.

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: June 6, 2024

Residential Tenancy Branch