

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenant under the *Residential Tenancy Act* (the "Act").

The Tenant's Application for Dispute Resolution made on April 9, 2024, is 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 Application for Dispute Resolution made on April 25, 2024, is for:

- an order of possession pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the Act;
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act.

H.B. attended the hearing for the Landlord.

Tenant K.K. and Agent Y.K. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

I find that the Landlord acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

Service of Evidence

The Tenant acknowledged service of the Landlord's evidence and I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

The Landlord acknowledged service of the Tenant's evidence and I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Issues to be Decided

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

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 7, 2019, the current monthly rent is \$1,400.00, due on first day of the month, with a security deposit in the amount of \$500.00. The rental unit is basement suite, and the Landlord lives in the main floor of the home.

The Landlord issued a Two Month Notice to End Tenancy on January 5, 2024, (the "First Two Month Notice") which was cancelled by an arbitrator on March 27 after a hearing on March 26, 2024.

The Landlord issued a second Two Month Notice to End Tenancy for Landlord's Use on April 3, 2023 (the "Second Two Month Notice.") The Tenant believes that the Landlord has not issued this notice in good faith, and the daughter will not move in as stated on the Second Two Month Notice.

During this hearing, the Landlord testified that she needed her daughter to occupy the rental unit to assist the Landlord in taking care of her husband. Her husband is ill, and his appointments are a burden on the Landlord. The Landlord works long hours and takes care of the family and needs the help of her daughter. The Landlord's 19-year-old son lives at home but goes to school in a nearby community. The Landlord testified that her daughter is more responsible than her son, and she would help with her father's appointments.

The Landlord provided medical records, doctor's notes, and two appointment confirmations to show that her husband and her in-laws have many medical issues. The Landlord testified that her husband's condition is terminal, and that he should be on oxygen all the time.

The Landlord's daughter swore an affidavit stating that her move to the rental unit would ease the burden on her mother. The affidavit stated her father has significant health challenges and needs assistance at medical appointments. Further, her grandparents need increased support. The daughter's affidavit stated that moving into the rental unit would allow her to spend more time with her father and grandparents.

The Tenant's daughter, Y.K. testified that the Landlord's husband lives downstairs, and doesn't have much contact with the Landlord. Y.K. testified that she knows this because the walls are thin.

Y.K. testified that she did not believe the Landlord issued the Second Two Month Notice in good faith because the reasons on the first and second notices were different. The Tenant stated that the Landlord still had not provided evidence from the educational institute to show that Landlord's daughter had transferred to it.

Y.K. questioned why the Landlord noted that her daughter's in-laws would be moving in during the first hearing.

Y.K. testified that the Landlord had told them that market value for the rental unit was \$2,000.00 or possibly \$3,000.00 and the Tenant only pays \$1,400.00.

Y.K. testified that her brother will be in his last year of high school in September, and it would be difficult to transfer schools.

Y.K. testified that she had recently seen the Landlord's husband walking around without oxygen, as he often does. She stated she had never seen him on air support. Y.K. testified that her mother sees the Landlord's husband every day at their holy place of worship, without oxygen.

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.

As the Tenant disputed this notice on April 9, 2024, and since I have found that the Two Month Notice was served to the Tenant on April 3, 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The Tenant dispute 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. 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.

I find that, while both the Tenant and the Landlord have provided equally plausible explanations as to why the notice was issued, the Landlord, who bears the burden of proof, has met that burden. The Landlord's evidence shows that her husband has a medical condition. The Landlord supplied two appointment confirmations and testified that the appointments and her husband's condition have become a burden on her. I accept the Landlord's testimony that having her daughter in the rental unit will ease her burden, and that she intends for her daughter to occupy the rental unit.

I find that it is more likely than not that the Landlord's daughter will occupy the rental unit for a reasonable period of time for at least six months, as was the legislation when the Second Two Month Notice was issued.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has proven that she has sufficient cause to issue the Two Month Notice to the Tenant and obtain an end to this tenancy.

Therefore, 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 dismissed without leave to reapply.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession. The Order of Possession will be effective 30 days after service upon the Tenant because the Tenant has children and will require time to find new accommodations.

Are the Tenants or the Landlord entitled to recover the filing fee for this application from the other?

As both parties filed applications in this matter and have both paid a filing fee, I find that neither party is entitled to recover the filing fee paid for their application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord effective **thirty (30) days after service of this Order on the Tenant**. Should the Tenant 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.

The Tenants 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 dismissed without leave to reapply.

Both parties' applications for authorization to recover the filing fee for this application from the other under section 72 of the Act are 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: June 26, 2024

Residential Tenancy Branch