



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two Applications for Dispute Resolution (Applications) that were filed by the Tenant under the *Residential Tenancy Act* (Act), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice);
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit or site;
- Authorization to change the locks to the rental unit;
- An order for the Landlord to return their personal property;
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- Recovery of both filing fees.

These matters were originally heard and decided by Arbitrator Denegar on August 29, 2024. The Tenant successfully sought judicial review of that decision, and the matter was returned to the Residential Tenancy Branch (Branch) for re-adjudication. The matter was scheduled before me on July 2, 2024, at 9:30 a.m.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord and their lawyer acknowledged service of the Proceeding Package and the parties acknowledged receipt of the documentary evidence before me from one another. No service concerns were raised. I therefore found the above noted documents sufficiently served for the purposes of the Act. The evidence was therefore accepted by me for consideration and the hearing proceeded as scheduled.

Preliminary Matters

Matter #1

In their Applications the Tenant sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Residential Tenancy Branch Rules of Procedure (Rules) states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a Two Month Notice and remains in the rental unit, I find that the priority claim relates to whether the tenancy will continue or end. As the other claims are not sufficiently related to the validity or enforceability of the Two Month Notice, I exercised my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit or site;
- Authorization to change the locks to the rental unit; and
- An order for the Landlord to return their personal property.

Matter #2

Although G.G. attended the hearing as an agent on behalf of the Landlord, they declined to voluntarily provide testimony. As such, the Tenant's lawyer made a request under rules 5.3 and 5.4 of the Rules that a summons be issued to compel their testimony as they did not anticipate that they would attend and refuse to testify. The Tenant's lawyer stated that they intended to question them about testimony provided under affirmation at a previously recorded hearing. A copy of the recording was submitted.

The Landlord's lawyer argued that as a digital evidence worksheet was not submitted by the Tenant regarding the recording as required, they do not know what testimony specifically they want G.G. to speak to. The Tenant's lawyer stated that it was their testimony that the Landlord relies on the Tenant's rental income to pay for the mortgage on the rental unit.

After considering the request and the positions of the parties, the request was granted and G.G. provided testimony under affirmation subject to cross-examination.

Matter #3

During the hearing, the Landlord's lawyer requested that they be allowed to submit additional documentary evidence regarding the change in the Landlord's financial circumstances. The request was denied as I found that the Landlord and their lawyer had already had more than enough time to submit and serve documentary evidence for my consideration and all the evidence service and submissions deadlines had passed. Further to this, the documentation related to the period just prior to service of the Two Month Notice, which was in early 2023, more than one year prior to the hearing. As a result, I did not consider it to be new in accordance with rule 3.17 of the Rules.

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 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.

The parties agreed that the tenancy is currently periodic (month-to-month) and while they disputed whether the rent increases imposed over the course of the tenancy were in accordance with the Act, they agreed that the Tenant is currently paying \$2,000.00 per month. The Landlord and their lawyer stated that the Two Month Notice was posted to the door of the rental unit and placed in the mailbox by the Landlord's agent G.G. on May 25, 2023. At the hearing, the Tenant acknowledged receipt that same day. The Tenant filed an application seeking its cancellation 13 days later, on June 7, 2023.

The Two Month Notice before me is on the Branch approved form, is signed and dated by G.G. on May 25, 2023, has an effective date of July 31, 2023, and states that the tenancy is being ended because the Landlord or their spouse intend in good faith to occupy the rental unit.

While the parties, their lawyers, and their witnesses provided significant testimony, documentary evidence, arguments, and submissions, the crux of these was whether the Landlord intends, in good faith, to occupy the rental unit. The Landlord argued that they did, while the Tenant argued that they did not.

The Landlord and their lawyer argued that the property in which the rental unit is located was purpose-built for the Landlord to occupy, and that for various reasons their plans to occupy it much earlier were delayed. They argued that when the Landlord's family

member, whom they were residing with across the street, passed away in January of 2023, they decided to re-occupy the rental unit upon their return from India. As a result, they stated that the Two Month Notice was served. The Landlord and their lawyer stated that the Landlord has no ulterior motives and plans in good faith to occupy the rental unit. They also acknowledged that they understand the consequences for failing to occupy the rental unit as required.

The Tenant and their lawyer argued that they do not believe the Landlord intends to occupy the rental unit and fear it will be either re-rented at a higher monthly rate or placed on short-term rental sites, as the Landlord has done this with other units and properties. They also argued that regardless of whether the Landlord intends to occupy the rental unit, they have ulterior motives for ending the tenancy and therefore the Two Month Notice has not been served in good faith.

The Tenant and their Lawyer argued that as the Landlord owns other properties, there are other units that could be occupied by the Landlord without needing to end their tenancy. The Landlord and their lawyer disagreed, stating that no other units are comparable in size and functionality, as the unit was built with the Landlord's future occupancy in mind.

The Tenant and their Lawyer argued that there is a long history of the Landlord requesting and imposing rent increases contrary to the Act, which needs to be taken into consideration. They argued that the timing of the Two Month Notice is suspicious, as it was served less than one month after a previously issued One Month Notice was cancelled by the Branch and shortly after the Landlord attempted again to unlawfully increase their rent. The Landlord and their lawyer denied these allegations, stating that although no notices of rent increase were ever issued, the Tenant has agreed to and paid all rent increases. As a result, they argued that they were lawful. In the alternative, they argued that the Tenant should be estopped from arguing that any previous rent increases were unlawful.

The Tenant and their lawyer also stated that there were disputes between the parties regarding parking, which they believe was a factor in the Landlord's decision to have the Two Month Notice issued. They also argued that another occupant has previously been evicted for the same reason, and that the Landlord failed to use that rental unit as required. The Landlord and their lawyer denied these allegations, reiterating that the Two Month Notice has been served in good faith and stating that the aforementioned tenant was evicted for non-payment of rent and ultimately abandoned the rental unit.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party bearing the burden of proof has responsibility to provide evidence over and above their testimony to prove their claim. In this case, the Landlord bears the burden of proof.

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

Section 49(3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(8)(a) of the Act states that upon receipt of a Two Month Notice the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Branch. As the Tenant disputed this notice on June 7, 2023, and I am satisfied that the Two Month Notice was served on and received by the Tenant on May 25, 2024, I find that the Tenant applied to dispute the Two Month Notice within the time frame allowed by section 49(8)(a) of the Act. I therefore find that conclusive presumption under section 49(9) of the Act does not apply, and that the Landlord has the burden to prove that they have sufficient grounds to end the tenancy via the Two Month Notice.

The Tenant disputes that the Two Month 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, which the Tenant has done.

Regardless of whether the Landlord intends to occupy the rental unit, for the reasons set out below, I find that they have failed to satisfy me on a balance of probabilities that the Two Month Notice was served in good faith. As a result, I find that it was not. First, I am satisfied that there is an acrimonious relationship between the parties. In a letter from the Landlord's lawyer A.E. dated June 5, 2023, A.E. even acknowledges that a strained tenancy relationship has developed between the parties. Further to this, the documentary evidence before me satisfies me that the parties have had ongoing disputes about parking.

Second, I am satisfied that the Landlord has been imposing rent increases contrary to the Act and regulations, and that they attempted to unlawfully increase the rent again shortly before the Two Month Notice was issued. The Tenant's witness B.S. provided affirmed testimony that the Landlord and J.G., who also owns the rental unit, attended

the rental unit in January of 2023, and attempted to increase the rent. B.S. stated that during the conversation the Landlord and J.G. advised the Tenant that they were renting the unit at way below market value, and that they could get way more for it on AirBnB. They stated that when the Tenant repeatedly refused to accept the rent increase, the Landlord and J.G. stated that they would get them evicted. While the Landlord denied that this conversation occurred, citing a trip to India as proof that they were away, no documentary evidence was submitted showing when exactly they left for India. As a result, I do not accept that this conversation never occurred because they were out of the country, as alleged. I therefore prefer the affirmed testimony of the witness in this regard.

The parties also agreed that no notices of rent increase have ever been issued by the Landlord. As rent at the start of the tenancy was \$1,800.00, and the parties agreed that the Tenant is currently paying \$2,000.00, I am therefore satisfied that rent increases have been imposed contrary to the requirements of the Act. While the Landlord's lawyer argued that the Tenant should be estopped from arguing that these rent increases were unlawful as they agreed to them and paid them, I disagree. Even where a tenant agrees to a rent increase, the Landlord is still required to get this agreement in writing, issue a Notice of Rent Increase on the required form, and comply with the notice and timing requirements set out in the Act and regulation, which the Landlord unequivocally did not do. Further to this, the Tenant submitted e-transfer records which satisfy me on a balance of probabilities that the Landlord imposed a rent increase of \$50.00 per month in June of 2021 during the moratorium on rent increases, which I find particularly egregious.

Third, I find the timing of the Two Month Notice suspicious and more than merely coincidental. The Tenant and their lawyer submitted evidence in the form of the recording of the hearing about the One Month Notice, wherein affirmed testimony was provided on behalf of the Landlord that the Landlords were reliant on the payment of the Tenant's rent to pay the mortgage on the rental unit. Despite this, the Two Month Notice was served only 23 days after these statements were made and only 22 days after the One Month Notice was cancelled by the Branch. Although the Landlord and their lawyer argued at the hearing that the Landlord's financial circumstances had changed between when the One Month Notice was cancelled and issuance of the Two Month Notice such that the rental income was no longer required to pay the mortgage, no documentary or other corroboratory evidence was submitted to substantiate this. As a result, I am not satisfied by the Landlord that it did. As a result, I have serious concerns about the Landlord's position that they will occupy the rental unit, rather than re-rent it as alleged by the Tenant.

Based on the above, I am satisfied that the Landlord has repeatedly engaged in behaviour contrary to the requirements of the Act and regulations, and that they have ulterior motives, financial and otherwise, for wanting to end the tenancy, regardless of whether or not they will reside in the rental unit. While the above noted circumstances may not equate to a finding of bad faith if considered individually, when considered

together, they are damning. Based on the above, I therefore grant the Tenant's Application seeking cancellation of the Two Month Notice as the issue of good faith was raised by the Tenant and the Landlord has failed to satisfy me that it was served in good faith, absent of any ulterior motive. I therefore order that the Two Month Notice is cancelled and that his tenancy continue in full force and effect until it is ended in accordance with 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 grant them recovery of one filing fee pursuant to section 72(1) of the Act. I dismiss their claim for recovery of the second filing fee without leave to reapply, as they could have amended their original Application to include the claims made in the second application at no additional cost. As per their request, and pursuant to section 72(2)(a) of the Act, the Tenant may withhold \$100.00 from the next months rent payable under the tenancy agreement, in recovery of this amount.

Conclusion

The Tenants' application for cancellation of the Two Month Notice is granted. The Two Month Notice dated May 25, 2023, with an effective date of July 31, 2023, is cancelled and is of no force or effect.

Pursuant to sections 72(1) and 72(2)(a) of the Act, the Tenant may withhold \$100.00 from the next months rent payable under the tenancy agreement in recovery of the \$100.00 filing fee.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 24, 2024