

DECISION

Introduction

This hearing dealt with the parties' Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of a one month notice to end tenancy for cause dated March 28, 2024 (the "One Month Notice") under section 47 of the Act;
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62(3) of the Act; and
- authorization to recover the Tenant's filing fee from the Landlord under section 72(1) of the Act.

The Landlord applied for an order of possession of the rental unit based on a mutual agreement to end the tenancy under section 55(2)(d) of the Act.

Preliminary Matters

Service of Notice of Dispute Resolution Proceeding Package and Evidence

The Landlord acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and initial evidence.

The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package and evidence.

The Landlord objected to the Tenant's additional package sent by registered mail on June 6, 2024.

According to the Tenant, the additional package organized the Tenant's earlier evidence, added two Residential Tenancy Policy Guidelines, a Supreme Court of British Columbia decision, two Residential Tenancy Branch decisions, a website screenshot about mutual agreements to end tenancy, and text messages between BH and the Landlord from July 2023.

Under Rule 3.15 of the Rules of Procedure, a respondent must ensure evidence that the respondent intends to rely on is received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find the Tenant's additional

package was not received by the Landlord with sufficient time prior to this hearing. I do not find the Tenant to have submitted evidence that is new and relevant and that was not available when the Tenant submitted the initial evidence. Therefore, I have excluded the Tenant's late package from consideration. However, I have considered the oral testimony and arguments made during the hearing, including those in relation to the case law and Policy Guidelines.

Parties to Dispute

The parties agree that only the Tenant signed tenancy agreements with the Landlord, while the other occupants BH and SS did not sign any agreement with the Landlord.

As explained in Residential Tenancy Policy Guideline 13. Rights and Responsibilities of Co-Tenants, a tenant is a person who has entered into a tenancy agreement to rent a rental unit. In contrast, a person that a tenant allows to move into the rental unit is an "occupant" who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include that person.

I find SS gave the Landlord rent cheques in respect of the tenancy agreements signed by the Tenant. However, I find BH and SS are not parties to any tenancy agreement with the Landlord. Based on privity of contract between the Landlord and the Tenant, and pursuant to section 64(3)(c) of the Act, I have amended the style of cause to remove BH and SS as tenants and applicants.

Issues to be Decided

Should the One Month Notice be cancelled?

Is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to an order that the Landlord comply with the Act, the regulations, or the tenancy agreement?

Is the Tenant entitled to recover the Tenant's filing fee?

Background and Evidence

I have reviewed all the accepted evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The rental unit is the upper suite of a half-duplex. This tenancy commenced in July 2021. The parties initially entered into a series of fixed term tenancy agreements from July 14, 2021 to July 31, 2022, August 1, 2022 to January 31, 2023, and from February 1, 2023 to July 31, 2023. Rent was \$4,000.00 due on the first day of each month plus

65% of the utilities. The Landlord collected a security deposit of \$2,000.00 and a pet damage deposit of \$200.00.

The Tenant was not given any utility invoices or asked to pay for utilities during the first two years of the tenancy.

In July 2023, the parties discussed increasing the rent. According to the Tenant, the Landlord informed her that the rent had not been increased for the past two years, and offered to waive the past utilities if the Tenant agreed to an above guideline rent increase. On July 29, 2023, the Tenant texted the Landlord saying that she felt a bit blindsided after the Landlord mentioned that she has been giving them slack, which the Tenant was grateful for, but just had no idea that was what the Landlord was doing.

On August 1, 2023, the parties met and signed a fixed term tenancy agreement commencing on August 1, 2023 and ending on April 30, 2024 (the "Current Agreement"). Later that day, the Tenant messaged the Landlord expressing appreciation that the Landlord was waiving the past utilities. The Tenant asked for confirmation of this agreement in writing because the tenancy agreement states otherwise.

On August 3, 2023, the parties met to re-sign an updated version of the Current Agreement. Parts that were previously handwritten have been typed out in the updated version. The parties also signed a mutual agreement to end a tenancy #RTB-8 form with an effective date of April 30, 2024 (the "Mutual Agreement").

According to the Current Agreement, rent is \$4,141.12 due on the first day of each month, with a "deal" that it would be \$4,000.00 per month from August to October 2023, and \$4,100.00 from November 2023 to April 2024 if rent is paid on time, in full, and for helping the Landlord, plus 65% of utilities.

In March 2024, the Tenant messaged the Landlord about the lease ending in April. The Tenant offered to resign and meet with the Landlord to give more postdated cheques.

The Landlord replied that she did not agree to extend the tenancy, as the Tenant had already negotiated at length. The Tenant asked the Landlord why she wanted them to be out.

In April 2024, the Landlord issued the One Month Notice to the Tenant, with an effective date of April 30, 2024. The stated reason for ending the tenancy is that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The details of cause state:

Renter violated Privacy, by disclosing terms of Rental Contract; in violation of Rental Contract Addendum Item #27 Privacy and in violation of privacy laws

Significant complaints resulting from privacy breaches, including end of neighbour's rental due to privacy breaches, and including due to factors of complaints of non-contract occupant(s), in violation of Rental Agreement; and pet(s) pet deposit for only 1 pet, complaints of 2 pets on premises in violation of Rental Agreement

Significant damages and losses to landlord from the breach of privacy

The Tenant received a copy of the One Month Notice on April 12, 2024 and made an application to dispute it on April 13, 2024.

On or around April 19, 2024, the Landlord sent the Tenant a demand for payment of the utilities owing, which were due and payable if the Tenant does not honour the Mutual Agreement.

The Landlord gave the following testimony and evidence:

- The parties entered into the Mutual Agreement in exchange for the Landlord's forgiveness of unpaid utilities (water, hydro, and gas) under the previous tenancy agreements, and for mutual certainty of the time for both parties. Under the first three tenancy agreements, the Tenant was responsible for 65% of the utilities, which the Tenant did not pay. The Landlord agreed to waive the unpaid utilities amount, which exceeded \$5,500.00, and not initiate an eviction proceeding, in exchange for the Tenant agreeing to enter into the Mutual Agreement.
- The Landlord met with the Tenant and SS on August 1, 2023, by which time the tenancy was already month-to-month. The Tenant and SS negotiated for \$4,000.00 rent for August to October 2023, and \$4,100.00 from November 2023 to April 2024. The Current Agreement was entered into to formalize the Mutual Agreement and to document the agreed rent increase. An ordinary rent increase would have been \$80.00, and the agreed rent increase of \$100.00 was just \$20.00 more. SS gave the Landlord cheques for August 2023 to April 2024 in consideration of the Mutual Agreement.
- The agreement to waive the utilities for the Mutual Agreement is referenced by the Tenant's text message dated August 1, 2023. There was a tripartite agreement including the Current Agreement, the Mutual Agreement, and the agreement to waive the requirement to pay the utilities debt. It was a win-win situation negotiated by the parties, made in good faith and with consideration.
- In 2024, towards the time that the Tenant should be leaving, they first started trying to actively ignore the Mutual Agreement, then started raising contentions about it, eventually refusing to leave or meet with the Landlord. When the Tenant indicated her intention to remain in the unit after April 30, 2024, the Landlord wrote to the Tenant stating that she would not be required to waive her entitlement to collect the unpaid utilities. However, this did not mean the Landlord accepted the Tenant's position that the Mutual Agreement was unenforceable. The letter was meant to convey the Landlord's shock and unhappiness at the Tenant's decision, and to caution the Tenant of the consequence should the

Mutual Agreement be found to be invalid. The lack of a signing date on the Mutual Agreement does not make it null and void.

- The Tenant argues that the Mutual Agreement was entered into at the start of the tenancy, not the end. However, this was the term that the Tenant negotiated in exchange for the utilities debt-forgiveness. This was not an end-run around the prohibition of end-dates to fixed-term tenancies or an attempt to contract out of or avoid the Act. The parties never entered into similar mutual agreements to end tenancies at the start of the prior tenancy agreements. The Mutual Agreement was entered into at the end of the tenancy, giving the Tenant many months' notice for it to conclude, plenty of time to find another place, and not move out in colder months. The end of April accommodated SS's school year.
- The Tenant violated a material term of the tenancy agreement, which is Item #27 of the addendum, by disclosing the price of her rent to a neighbouring tenant. This breach caused unreasonable disturbance. The neighbouring tenant had been content paying market price. As a result of the Tenant's disclosure of confidential information, the neighbouring tenant stopped paying rent, sued the Landlord, and the Landlord had to evict them and hire a bailiff. The Tenant have more people, more pets, and more noise, but were paying considerably less. The neighbour complained that the Tenant has two pets. The Tenant is only allowed one pet in the tenancy agreement. The Tenant and occupants disturbed the neighbour with their controlling and interfering behaviour. They take up all the parking space on the property. They were getting under the neighbour's skin. They were controlling and pressuring them to make trouble. The Tenant and occupants were nosy when the neighbour was evicted. They came peeking in the window and continue to bother other people. After the neighbouring tenant moved out, the Landlord brought in a short-term renter in the interim.
- The property is owned by the Landlord's late mother, who passed away prior to August 2023, and is now part of her estate. The estate property is to be distributed, with beneficiaries waiting to move in.

The Tenant gave the following testimony and evidence:

- The Tenant and occupants did not torment their neighbours. Their neighbour had came to them in distress, due to some issues with the Landlord. That neighbour had approached BH to ask about rent, and BH informed them of the rent amount. The neighbour loved to visit with the Tenant's pet on the porch. The Tenant and the occupants saw police were over at the neighbour's unit, knew something was going on, so they stayed clear away and were not involved. The Tenant does not agree with the neighbouring tenant's subsequent refusal to pay rent to the Landlord. The Landlord's dispute with the neighbouring tenant was in December 2023. The Landlord did not raise this issue until April 2024, months after the neighbouring tenant learned about the rent and stated that they felt it was unfair.
- The Tenant had one pet when moving in. The Tenant's second pet joined in October 2021, three months after the tenancy began. The Landlord was aware of the second pet but did not raise the issue until April 2024. The second pet did not

come up, and there could have been a conversation, or payment of an extra deposit.

- The Landlord came back to ask the Tenant to re-sign the Current Agreement because the other papers were messy. The Tenant was not aware of what she was signing when she signed the Mutual Agreement. The Landlord told the Tenant where to sign. The Tenant would not have signed without talking to the other occupants about the end date. The Tenant thought she was signing more of the new tenancy agreement papers.
- The Landlord told the Tenant that she did not have to pay the past utilities and that it was based on an honour system.
- The Tenant was aware that the Landlord's mother had passed away. The Landlord had said that down the road her brother might want to move in. The unit next door has been empty.
- The Tenant had asked the Landlord why she wants to end the tenancy and why the Landlord was ignoring the Tenant's questions. The Tenant was concerned about the Landlord's well-being as the Landlord did not respond for three weeks. The parties had a great relationship and great communication previously. The Tenant was confused by the change.

The Tenant submits that:

- The Mutual Agreement is not enforceable due to the date. Mutual agreements to end tenancy are not meant to set out the move out date at the beginning of the tenancy.
- Alternatively, the Tenant entered the Mutual Agreement under duress, and the agreement is unconscionable. The Landlord is in a position of power and knowledge not shared by the Tenant. The Landlord is a legal professional by trade and has responsibility to ensure good faith. The Tenant did not understand the Mutual Agreement. The tenancy could have continued month-to-month. The agreements only benefited the Landlord and were not win-win.
- The Landlord is estopped from requiring payment of the past utilities. The Landlord acquiesced to years of non-payment.
- The Landlord has known of the Tenant's second pet for two years. The Landlord has waived any right to end the tenancy due to the second pet.
- The One Month Notice should not be enforced as there is no material breach or serious misconduct. According to *Guevara v. Louie*, 2020 BCSC 380 at paragraph 55, a review of the grounds on which a tenancy may be terminated under section 47 of the Act makes it apparent that the tenant must have engaged in serious misconduct that seriously affected the landlord or the other tenants of the building. The disturbance caused by the neighbouring tenant is unfortunate, but the Tenant is not liable for the decision of other tenants.

Analysis

Should the One Month Notice be cancelled?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved form.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 of the Act in form and content.

I find the Tenant received the One Month Notice on April 12, 2024 and made an application to dispute it the following day. I find the Tenant's application was made within the 10-day limit required under section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Under section 47(1)(d)(i) of the Act, the landlord may end a tenancy by giving a one month notice for cause if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 27 of the parties' tenancy agreement addendum states: "Privacy & Confidentiality: All matters between the Landlord and Tenant, including the terms of the contract, Private & Confidential, and may not be disclosed, except for utilities." I note the One Month Notice does not state that the Landlord seeks to end the tenancy for "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so". Therefore, I do not find it is necessary to analyze factors such as whether this term is a material term of the tenancy agreement, or whether the Tenant was given a written notice to correct a breach.

I find there is insufficient evidence that BH had done more than simply inform the neighbouring tenant of the amount of rent payable by the Tenant. I do not find the evidence to show that the Tenant or another occupant had actively encouraged or participated in the neighbouring tenant's dispute with the Landlord. I do not find the

Tenant to be liable for the disturbance caused by the neighbouring tenant or their refusal to pay rent.

I find the Landlord has not provided sufficient details, such as descriptions of specific incidents or complaints from other residents, to substantiate the Landlord's claims of controlling or disturbing behaviours by the Tenant, BH, or SS.

I do not find the evidence to indicate that the Tenant's second pet has caused any significant interference or unreasonable disturbance. I do not find the Tenant to be responsible for any disturbance caused by the neighbouring tenant due to being upset about the Tenant having two pets.

Overall, I do not find that the Tenant or a person permitted onto the property by the Tenant has significantly interfered with or unreasonably disturbed the Landlord or another occupant of the property, warranting eviction.

I conclude the Landlord has not established that this tenancy should end for the reason stated in the One Month Notice. Accordingly, I order at the One Month Notice is cancelled.

Is the Landlord entitled to an Order of Possession?

Since the One Month Notice is cancelled, I do not find the Landlord is entitled to an order of possession based on the One Month Notice. I will now consider whether the Landlord is entitled to an order of possession based on the Mutual Agreement.

Under section 55(2)(d) of the Act, a landlord may request an order of possession by making an application for dispute resolution if the landlord and tenant have agreed in writing that the tenancy is ended.

Section 44(1) of the Act sets out the ways in which a tenancy ends, which include:

- the landlord and tenant agree in writing to end the tenancy (section 44(1)(c))
- the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97(2)(a.1) of the Act, requires the tenant to vacate the rental unit at the end of the term (section 44(1)(b))
- the tenancy agreement is a sublease agreement (section 44(1)(g))

Under section 13.1 of the regulations, a circumstance in which a landlord may include a requirement that the tenant vacate the rental unit at the end of a fixed term is that the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term.

In this case, I find the parties signed the Current Agreement and the Mutual Agreement at the same time, approximately eight months before the fixed term end date of April 30, 2024. I find the Tenant had texted the Landlord expressing appreciation that the past

utilities would be waived and asked the Landlord for confirmation in writing. However, I do not find the Current Agreement or the Mutual Agreement to make any reference to the waiver of past utilities. I find there is insufficient evidence that the parties had agreed to waive the past utilities in exchange for the Tenant to move out by April 30, 2024. I find the updated version of the Current Agreement continues to state that the Tenant is to pay 65% of the utilities. I find the Current Agreement also includes a rent increase, which I find to be less consistent with an intention to end the tenancy.

Based on the evidence presented, I find the Current Agreement and Mutual Agreement were signed in the context of the parties coming together to renew the tenancy for another fixed term. I do not find the parties to have agreed that the tenancy was ending, and signed these documents to agree on terms such as giving the Tenant more time to move out of the rental unit.

Moreover, I find that by signing the Mutual Agreement and the Current Agreement together at the start of the fixed term, and by setting the tenancy end date to coincide with the fixed term end date, the parties effectively entered into a fixed term tenancy agreement that required the Tenant to vacate at the end of the fixed term. I further note section 4 of the Current Agreement also specifies that if no new lease is reached at the end of the fixed term, the Tenant must vacate and return peaceable, quiet, vacant possession.

I find the Current Agreement is not a sublease. I also find the Current Agreement and Mutual Agreement do not refer to the circumstances prescribed under section 97(2)(a.1) of the Act and section 13.1 of the regulations.

Under these circumstances, I find both the Mutual Agreement and the vacate clause in section 4 of the Current Agreement to amount to attempts to avoid or contract out of the Act and the regulations, because they require the Tenant to vacate the rental unit at the end of a fixed term tenancy without qualifying for one of the two scenarios permitted under the Act. Therefore, I find both the vacate clause and the Mutual Agreement are of no effect under section 5 of the Act.

I dismiss the Landlord's claim for an order of possession based on the Mutual Agreement without leave to re-apply.

Is the Tenant entitled to an order that the Landlord comply with the Act, the regulations, or the tenancy agreement?

Under section 62(3) of the Act, the director may make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement, and an order that the Act, and an order that the Act applies.

I find the parties did not sign another tenancy agreement after April 30, 2024. I have found above that the vacate clause and the Mutual Agreement are of no effect.

Pursuant to sections 62(3) and 44(3) of the Act, I order that the parties are deemed to have renewed the Current Agreement as a month-to-month tenancy on the same terms following the expiry of the fixed term on April 30, 2024.

Is the Tenant entitled to recover the Tenant's filing fee?

The Tenant has been successful. I find the Tenant is entitled to recover the filing fee for the Tenant's application from the Landlord under section 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to deduct the filing fee from the next payment of rent to the Landlord.

Conclusion

The Landlord's application for an order of possession based on a mutual agreement to end the tenancy is dismissed without leave to re-apply.

The One Month Notice is cancelled and of no force or effect. This tenancy will continue until ended in accordance with the Act. The Tenant is authorized to deduct the Tenant's filing fee from the next payment of rent to the Landlord.

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: July 10, 2024

Residential Tenancy Branch