DECISION

Introduction

This hearing dealt with the Landlords' 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 for Landlord's Use of Property (Two Month Notice) under sections 49 and 55 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- An order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 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 acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant was served on July 23, 2024, by registered mail in accordance with section 89(1) of the Act and deemed served the fifth day after the registered mailing.

Service of 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.

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Preliminary Issues

- Remove ED

The parties advised the ED has not occupied the rental unit since 2022 and both parties agreed to remove ED from the applications.

Issues to be Decided

Are the Landlords entitled to an Order of Possession based on a Two Month Notice?

Are the Landlords entitled to recover the filing fee for this application from the Tenant?

Is the Tenant entitled to an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

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

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.

Evidence was provided showing that this tenancy began on December 1, 2014, with a monthly rent of $1,449.00 due on the first of the month with a security deposit in the amount of $650.00 and a pet damage deposit in the amount of $650.00. The residential property consists of the upstairs which is occupied by the Landlords and the rental unit which is occupied by the Tenant.

The Tenant is seeking reduction of rent for services of facilities agreed upon but not provided and to have the Landlords comply with the Act, regulation and/or tenancy agreement. The Landlords filed a cross application seeking an Order of Possession based on a Two Month Notice for Landlord's Use.

The Landlords' Application

The Landlords served a Two Month Notice for Landlord's Use by posting it to the rental unit door on June 30, 2024, it indicated the landlord or landlord's spouse intended to occupy the rental unit and had a move out date of August 31, 2024 (the Two Month Notice). The Landlords' position is that they need more space and would like to use the rental unit for personal use.

The Tenant's position is they believe the Landlords will occupy the rental unit; however, the Tenant argued the move out date should have been September 30, 2024, based on the deeming provisions. The Tenant advised the Tenant was out of town and received the Two Month Notice on June 30, 2024, when they returned to the rental unit. The Tenant did not file a claim disputing the Two Month Notice.

The Tenant's Application

The Tenant is seeking $200.00 per month for 2.5 months. The Tenant's position is that Landlord CM sent the Tenant a text message around July 19, 2024, about the use of the backyard by the Tenant's dog. The text message stated, "yard is not a toilet for your dog". The Tenant argued after they received that text message, they felt unsafe using the backyard and have refrained from using the backyard as much as possible during the last 2.5 months. The Tenant advised Landlord CM sent another text message informing the Tenant a camera would be installed to catch where the dog was ruining the grass. The Tenant argued the interaction with the Landlords about the backyard impacted the Tenant's quiet enjoyment.

Both parties advised the backyard was not included in the tenancy agreement but since the tenancy began the Tenant was allowed to use the backyard.

The Landlords' position is that they sent the text message because the Landlords were tired of having the grass ruined by the Tenant's dog. The Landlords argued the Tenant was never prevented from using the backyard and the Tenant never asked the Landlord if there was a problem with the dog or the Tenant using the backyard.

The Tenant also filed to have the Landlords comply with the Act, regulation and/or tenancy agreement. The Tenant argued that the Two Month Notice was not received until July 1, 2024, based on the deeming provisions and the end of the tenancy should be September 30, 2024.

The Landlords' position is that the Tenant received the Two Month Notice on June 30, 2024, and the end of the tenancy was August 30, 2024.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has a responsibility to provide evidence over and above their testimony to prove their claim.

Is the Landlord entitled to an Order of Possession based on the Two Month Notice?

Sections 49(3) and (5) of the Act states that a landlord may issue a Two Month Notice when the landlord or a close family member intends in good faith to occupy the rental unit, or the landlord sells the rental unit and the purchaser asks the landlord in writing to

give notice to end tenancy as they or their close family member intend on occupying the rental unit.

Sections 49(8) and (9) of the Act states that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 15 days after the date the tenant receives the notice, is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

The Landlords advised the Two Month Notice was posted to the rental unit door on June 28, 2024. The Tenant testified that they received the Two Month Notice on June 30, 2024. The Tenant argued that based on the deeming provisions the Two Month Notice was not deemed served until July 1, 2024, and the end date of the tenancy should be September 30, 2024.

As stated in Policy Guideline #12, an arbitrator may consider evidence from both the party receiving a document and the party serving the document to determine the date of service. Policy Guideline #12 goes on to state “an arbitrator may also consider an acknowledgement of service by the party receiving the document, the arbitrator may then determine that the date of service is the date the party acknowledges receipt of service and is earlier than the deeming provisions”.

In this case the Tenant acknowledged receiving the Two Month Notice on June 30, 2024, as such I find that this is the date of service, and it is earlier than the deeming provisions. As such, I find that the end date on the Two Month Notice was valid.

The Tenant testified that they did not dispute the Two Month Notice, the Tenant believes the Landlords will occupy the rental unit and that they only take issue with the end date of the tenancy on the Two Month Notice.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Tenant did not make an application under section 49(8) of the Act within 15 days of receiving the Two Month Notice. In accordance with section 49(9) of the Act, due to the failure of the Tenant to take this action within 15 days, I find the Tenant is conclusively presumed to have accepted that the tenancy has ended.

I accept that testimony of the Landlords that they would like to reclaim the rental unit as part of their living space. As stated in Policy Guideline #2A, if a landlord has rented out a rental unit in their house, the landlord can end the tenancy to reclaim the rental unit as part of their living space. Furthermore, as stated above the Tenant testified, they believe the Landlords will occupy the rental unit. I find that the Landlords have established the Two Month Notice was issued for sufficient grounds. Additionally, I find the form and content of the Two Month Notice is valid pursuant to section 52 of the Act.

As stated in Policy Guideline #54, an arbitrator has discretion to set the effective date of an order of possession and may consider extending the effective date. Given that the

Tenant has children and has occupied the rental unit for 9.5 years, I grant an Order of Possession for September 30, 2024, at 1:00 PM.

Is the Tenant entitled to an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Section 27 of the Act states that a landlord may terminate or restrict a service or facility, that is not a material term or is essential to the tenants' use of the rental unit as living accommodation, if they give 30 days' notice in the approved form and reduce the rent in an amount that is the same as the reduction in value of the tenancy.

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for repairs, services or facilities agreed upon but not provided.

Based on the testimony of both parties and the evidence, I find that the Tenant was not prevented from using the backyard. While the Tenant may have felt uncomfortable using the backyard, I find that the text message sent by the Landlords was not a restriction or termination of the Tenant’s use of the backyard. As such, I decline to award any reduction in rent.

Furthermore, the Tenant argued the interaction with the Landlords about the backyard resulted in a lack of quiet enjoyment. Policy Guideline #6 states “temporary discomfort or inconvenience does not consistent a basis for a breach of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbance may form a basis for a claim of a breach of entitlement to quiet enjoyment”. I find there is insufficient evidence that the Tenant faced frequent and ongoing interference by the Landlords with respect to the use of the backyard.

Based on the above, I dismiss the Tenant’s claim to reduce rent for repairs, services or facilities agreed upon but not provided, without leave to reapply.

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

Section 62 of the Act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

As stated in Policy Guideline #12, an arbitrator may consider evidence from both the party receiving a document and the party serving the document to determine the date of service. Policy Guideline #12 goes on to state “an arbitrator may also consider an acknowledgement of service by the party receiving the document, the arbitrator may then determine that the date of service is the date the party acknowledges receipt of service and is earlier than the deeming provisions”.

In this case the Tenant acknowledged receiving the Two Month Notice on June 30, 2024, as such I find that this is the date of service and is earlier than the deeming provisions. As such, I find that the end date on the Two Month Notice was valid.

As such, I find that the Landlords did comply with the Act, and I dismiss the Tenant's claim for an order to have the Landlords comply with the Act.

Are the Landlords or the Tenant entitled to recover the filing fee for their application?

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlords under section 72 of the Act is dismissed, without leave to reapply.

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the $100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlords **effective by 1:00 PM on September 30, 2024, 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 Tenant is entitled to one month's rent compensation as required under section 51(1) of the Act.

I authorize the Landlords to deduct $100.00 from the Tenant's security deposit in satisfaction of the recovery of the filing fee.

The Tenant's application is dismissed in its entirety, 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: September 4, 2024

Residential Tenancy Branch