

DECISION

Introduction

This hearing dealt with the Tenant's Application 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

This hearing also dealt with the Tenant's Cross Application 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
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Tenant M.E., Tenant's Counsel C.M. attended the hearing for the Tenant

Landlord F.L., Landlord's Daughter J.L., Landlord's Counsel C.W. attended the hearing for the Landlord.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Service of the Notice of Dispute Resolution Proceeding and Evidence

Both parties affirmed that there were no issues with service of the application and the evidence. I find that both parties were duly served with the materials in accordance with section 88 and section 89 of the Act.

Preliminary Matters

Sever

Residential Tenancy Branch Rules of Procedure Rule 2.3 states that claims in an application must be related to each other.

Rule 6.2 states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply. Given that the most urgent issue on this application is regarding the Landlord's Two Month Notice and whether this tenancy will continue or not, I exercise my discretion under Rule 6.2 to dismiss the following unrelated issues from the Tenant's Cross Application:

- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Amendment and Withdrawal

The parties agreed that the Tenant's Application and Cross Application contained duplicate issues. The parties agreed to allow the Tenant to withdraw the duplicate application, specifically the one with the file number ending in with the number five.

Under the framework of Rule 7.12, I amend the Tenant's application by removing the duplicate issue under section 64(3) of the Act, specifically the 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.

This hearing will deal with the remaining issue on the Tenant's Cross Application, specifically the following:

- 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

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 the evidence, 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 October 1, 2017. At the time of the hearing, the monthly rent was \$1,447.00 and due on the first day of the month. The tenancy is ongoing. The rental unit is the basement suite of a detached house.

The parties agreed that the Landlord served the Two Month Notice in person on July 6, 2024.

The Landlord's Counsel C.W. submitted that the Landlord has demonstrated good faith, in this case with the Landlord's Daughter J.L.'s intention to move into the rental unit because they have outgrown their current accommodations. C.W. also submitted that there are no ulterior motives for the Landlord given that they have always diligently fulfilled their duties throughout the tenancy. In one example, C.W. submitted that rent increases have always been done in compliance with the Act.

The Landlord's Daughter J.L. testified that they are currently living with their parent the Landlord F.L. and that the current living arrangements are not ideal. J.L. elaborated that their current accommodation is crowded, noisy, and not suitable for studying or their part-time tutoring job. J.L. affirmed that they intend to apply to postgraduate programs at a local university once they finish their undergraduate studies at another local university. J.L. stated that a move to the rental unit would be more suitable for their studies and their part-time tutoring job. J.L. testified that they are familiar with the rental unit, and that they have visited the rental unit in the past.

The Landlord testified that they also believe that moving their Daughter J.L. to the rental unit would be the best option for the family going forwards, given the fact that the rental unit is near the Landlord's current home, but also increasing the amount of privacy for the Daughter J.L.

The Landlord submitted a copy of the Landlord's Daughter's affidavit dated August 23, 2024.

A signed and completed copy of the Two Month Notice dated July 6, 2024, was provided, the effective date of the Two Month Notice is September 30, 2024, the reason cited on the Notice is the rental unit will be occupied by the child of the Landlord or the Landlord's spouse.

The Tenant testified that they do not believe the Landlord's Daughter J.L.'s affidavit evidence. The Tenant stated that the rental unit is not appropriate for anybody to live at. The Tenant affirmed that they do not believe the Landlord is willing to let their daughter experience the living situation at the rental unit. The Tenant declared that they do not believe the rental unit will be able to serve the Landlord's Daughter J.L.'s requirements. The Tenant claimed that the rental unit is a noisy place and that there are frequent conflicts with the tenants of the upstairs suite. The Tenant raised the issue that they believe the Landlord is targeting the Tenant because the Tenant has raised several complaints about the rental unit and the disputes with the upstairs tenants.

The Landlord's Counsel C.W. responded that the upstairs tenants and the Landlord have a good relationship, that the upstairs tenants are cooperative, and that the Tenant's complaints only started after the Two Month Notice was served. C.W. submitted that the only complaint received from the Tenant prior to serving the Two Month Notice was in May of 2023, and that the Tenant's noise complaints about the upstairs tenants only started after the Two Month Notice was served.

The Tenant also testified that they need more time to find a new place, and that they also need more money to find a new place.

Analysis

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

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 onus to prove their case is on the person making the claim.

Section 49(3) 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(1) defines close family members in a manner that includes the landlord's child. 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 July 17, 2024, and since I have found that the Two Month Notice was served to the Tenant on July 6, 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.

The Landlord has the responsibility to that they had sufficient grounds to serve the Two Month Notice, that it was served with good faith, without ulterior motives, and that they intend to accomplish the stated purpose on the Two Month Notice.

The Tenant dispute that the 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 assign significant weight to the Landlord's Daughter J.L.'s affidavit evidence and J.L.'s testimony. I also assign significant weight to the Landlord's testimony. I find that the Landlord and the Landlord's Daughter J.L. provided a coherent, detailed and believable account of their decision to move J.L. to the rental unit, and the factors that influenced their decision.

I find that the affidavit evidence corroborates both the Landlord's version of events and the Landlord's Daughter J.L.'s version of events. For example, I find that the Landlord's Daughter J.L. clearly explained how the move to the rental unit will accomplish several of their requirements such as the increased amount of room, the increased need for privacy, the suitability with their part time tutoring job, and the reasons why those requirements are currently not being met.

While the Tenant may claim that they do not believe the Landlord's evidence or the Landlord's intentions, I am not convinced. I find that the Landlord's testimony, the Landlord's Daughter J.L.'s testimony and the Landlord's evidence has sufficiently addressed and overcome the Tenant's claims. As a result, I prefer the Landlord's version of events over the Tenant's version of events.

In this case, based on the evidence, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established that they had sufficient grounds to serve the Two Month Notice, that it was served in good faith without ulterior motives, and that they intend to accomplish the stated purpose, specifically by planning to have the Landlord's Daughter J.L. move to and occupy the rental unit.

Notices served under section 49 must comply with section 52 of the Act for form and content. I have examined the Two Month Notice, and I find that it complies with section 52 of the Act, specifically it is signed and dated, it contains the effective date of the Notice, the grounds for ending the tenancy, and it is served in the appropriate form.

I uphold the Landlord's Two Month Notice dated July 6, 2024.

The Tenant's application to cancel the Landlord's Two Month Notice is cancelled, without leave to reapply.

Section 68(2)(a) of the Act provides the arbitrator with the discretion to order that a tenancy ends on a date other than the effective date shown on the notice to end tenancy.

Given the length of the tenancy, the Tenant's request for more time, the Tenant's mention of the financial challenge of moving, the short period of time between this hearing date and the effective date of the Notice, I find that October 31, 2024, is an appropriate date for the end of the Tenancy.

Accordingly, I exercise my discretion under section 68(1)(b) of the Act to amend the effective date of the Two Month Notice to October 31, 2024.

In addition, I grant the Landlord an Order of Possession effective on October 31, 2024, after service of the Order on the Tenant.

Conclusion

The Tenant's application to cancel the Landlord's Two Month Notice is dismissed, without leave to reapply.

The Two Month Notice dated July 6, 2024, is upheld.

The Landlord is granted an Order of Possession **effective at 1:00 PM October 31, 2024**, after service of the Order. Should the Tenant(s) 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.

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 20, 2024

Residential Tenancy Branch