

DECISION

Introduction

This hearing dealt with two separate tenancies within the same rental house. Tenant R.B. resides in the lower suite of the rental house. Tenants M.T. and S.K. reside in the upper suite of the rental house.

Tenant R.B. applied to dispute a Four Month Notice to End Tenancy for Landlord's Use of Property (The Lower Notice) and applied to recover the \$100.00 filing fee from the Landlords.

Tenants M.T. and S.K. applied to dispute a Four Month Notice to End Tenancy for Landlord's Use of Property (the Upper Notice) and applied to recover the \$100.00 filing fee from the Landlords.

The Residential Tenancy Branch joined the two files together as they pertain to the same rental building and the reason to end tenancy is the same for both tenancies.

Landlords V.C. and N.S. attended the hearing for the Landlords. The Landlords called witness P.F.

Tenant R.B., counsel for all named Tenants (Counsel), an articulated student and an occupant of the upper unit attended the hearing for the Tenants

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenants filed to dispute their respective Four Month Notices to End Tenancy for Landlord's Use of Property on August 15, 2024. The Residential Tenancy Branch made the Proceeding Package for the joined files available to the Tenants on August 30, 2024. Counsel submitted that the Proceeding Packages for both disputes were served on the Landlords via registered mail on September 3, 2024. Canada Post registered mail receipts for same were entered into evidence.

The Tenants had 3 days from the date they received the Proceeding Package to serve it on the Landlords. Three days from August 30, 2024 was September 2, 2024.

September 2, 2024 was a statutory holiday and Canada Post was closed. Under the Rules of Procedure, if the time for doing an act in a government office falls or expires on a day when the office is not open during regular business hours, the time is extended to

the next day that the office is open. Thus, the date for serving the Landlord was extended to September 3, 2024.

Landlord V.C. confirmed receipt of Tenant R.B.'s Proceeding Package on September 5, 2024. Landlord V.C. confirmed receipt of Tenant M.T. and S.K.'s Proceeding Package on September 7, 2024. I find that the Landlords was served with the Proceeding Packages in accordance with section 89(1) of the Act.

Service of Evidence

Counsel submitted that he and Landlord V.C. agreed to exchange evidence via email. Landlord V.C. testified to same.

Counsel submitted that the Landlords were served with the Tenants evidence via email on September 30, 2024. Landlord V.C. confirmed receipt of the Tenants' evidence on September 30, 2024. I find that the Landlords were sufficiently served, for the purposes of this Act, with the Tenants' evidence, in accordance with section 71 of the Act as receipt was confirmed.

Landlord V.C. testified that Counsel was served with the Landlords' evidence via email on October 10, 2024. Counsel confirmed receipt on October 10, 2024. Counsel did not object to the consideration of the Landlord's late evidence served on October 10, 2024. I find that Tenants were sufficiently served, for the purposes of this Act, with the Landlords' evidence, in accordance with section 71 of the Act as receipt was confirmed.

Landlord V.C. testified that one piece of evidence was served on the Landlord via email on October 15, 2024, the date of this hearing. Counsel for the Landlord objected to its consideration. I exclude the October 15, 2024 evidence as it was served far too late to be considered and its consideration would prejudice the Tenants who were not provided with a reasonable time to review it before this hearing.

Background and Evidence

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

Evidence was provided showing that Tenant R.B.'s tenancy began in the year 2000 and that rent in the amount of \$1,071.00 is due on the first day of each month. Landlord V.C. testified that the Lower unit is not a legal suite. This was not disputed by Counsel or Tenant R.B.

Evidence was provided showing that M.T. and S.K.'s tenancy began in November of 2017 and that rent in the amount of \$2,195.00 is due on the first day of each month.

Landlord V.C. testified that the Lower Notice was left in Tenant R.B.'s mailbox on July 31, 2024 and emailed to Tenant R.B. on July 31, 2024. Tenant R.B. testified that he

received the Lower Notice via email on July 31, 2024 and later received the mailbox copy. Tenant R.B. testified that the mailbox copy of the Lower Notice he received in the mailbox was signed by the Landlord. No issue with the form and or content of the Lower Notice was raised by Counsel.

Landlord V.C. testified that the Upper Notice was personally served to an occupant at the rental property on July 31, 2024. This evidence was not disputed. No issue with the form and or content of the Upper Notice was raised by Counsel.

Landlord V.C. testified that the Lower Notice and the Upper Notice were served on the Tenants because the Landlords entered into an agreement to sell the rental house, all the conditions have been satisfied and the purchaser asked the Landlords in writing to give notice to end the tenancy because the purchasers or close family member intends to occupy the rental house. Landlord V.C. testified that the completion date for the Contract of Purchase and Sale is December 2, 2024.

Landlord V.C. testified that the document titled “Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession” was served on the Tenants with the Lower Notice and Upper Notice. The Landlords are listed as the sellers (the Sellers). The purchasers are listed as the buyers (the Buyers). The Tenants entered the above document into evidence, it states:

- A. The undersigned (the “Buyer(s)”) and the Seller(s) have entered into the Contract of Purchase and Sale dated July 25, 2024 in respect of the purchase and sale of the [rental house].
- B. All conditions on which the purchase and sale of the Property under the Purchase Agreement depend have been satisfied or waived in accordance with the Purchase Agreement
- C. The property is currently rented to tenant(s).
- D. The Buyer(s) (or one or more of the spouse, children, and parents of the Buyer(s) or, in the case of a family corporation (as defined in the *Residential Tenancy Act*), voting shareholders of the Buyer(s)) intend in good faith to occupy the property.

The document “Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession” goes on to state that the Buyers request the Sellers to give the Tenants notice to terminate the tenancy by 1:00p.m. on December 1, 2024. The above document was executed by the Buyers on July 31, 2024.

The Landlords entered into evidence a document titled “Notice of Condition Waiver / Declaration of Fulfillment (Contract of Purchase and Sale).” This document is signed by the Buyers and states that as of July 31, 2024 the conditions of sale for the rental property have been fulfilled.

Counsel questioned why the above document was signed by the Landlords (also known as the Sellers). The Landlord’s real estate agent testified that since all of the conditions

of sale were for the sole benefit of the Buyers, the Buyers alone were required to sign the above document stating that the conditions were fulfilled.

The Landlords entered into evidence a copy of the deposit cheque for the rental property. The Landlords entered into evidence a letter from the Buyers' lawyer which states:

We act on behalf of the buyers, [names redacted for privacy], with respect to their purchase of [the rental house].

Our clients are ready, will and able to complete the purchase and have financing in place to close as soon as possible.

We understand that you are assisting the seller in dealing with the residential tenancy dispute tribunal.

Please feel free to use this letter in establishing that there are good and valid buyers anxious to complete this transaction.

The Landlords' realtor testified that:

- the rental house was on the market for a considerable period of time
- the Tenants were accommodating with viewings
- the Buyers wrote a standard offer with subjects
- the subjects were removed on July 31, 2024
- the Tenants were given notices to end tenancy
- the Buyers paid the deposit
- the completion date for the Contract of Purchase and Sale is December 2, 2024

Landlord V.C. testified that they did not serve the Tenants with a copy of the Contract for Purchase and Sale because it contains confidential information, and the Landlord served the Tenants with other documents which confirm the information required by the Residential Tenancy Branch. The Landlords uploaded a copy of the Contract of Purchase and Sale into evidence; however, since it was not served on the Tenants, it cannot be considered in this dispute.

Counsel submitted that section 49(5) of the Act lays out the test to end the tenancies of the Tenants. Counsel submitted that the Landlord bears the burden of proof to prove that all conditions of sale are satisfied. The Tenants submit that if the Landlord properly submitted and served all relevant documentation such as the Contract of Purchase and Sale, this process would have been easier. Counsel submitted that I must determine if the Landlords have met their onus without the Contract of Purchase and Sale. Counsel submitted that there is real doubt that the sale of the rental property is executed and will take place.

Analysis

Section 49(5) of the *Act* states that a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I find that the totality of the evidence, including the testimony of Landlord V.C., the testimony of the Landlords' realtor, the "Notice of Condition Waiver / Declaration of Fulfillment (Contract of Purchase and Sale)," the letter from the Buyers' lawyer and the "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession" prove, on a balance of probabilities, that Landlords entered into an agreement in good faith to sell the rental house. I find it highly unlikely that the Buyers would sign both the "Notice of Condition Waiver / Declaration of Fulfillment (Contract of Purchase and Sale)," and "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession" if a Contract of Purchase and Sale were not executed between the Landlords and the Buyer. I found the realtor's evidence to be clear, concise and truthful and that it independently supported Landlord V.C.'s testimony that the completion date of the Contract of Purchase and Sale is December 2, 2024 and that the conditions cleared on July 31, 2024.

Based on the testimony of Landlord V.C., the testimony of the Landlords' realtor and the document titled "Notice of Condition Waiver / Declaration of Fulfillment (Contract of Purchase and Sale)," I find that all the conditions on which the sale depend have been satisfied. I accept the realtor's testimony that only the Buyer is required to sign the above form because the conditions were for the sole benefit of the Buyer. I take no ill meaning to the lack of the Landlords' signatures on the above document.

Based on the testimony of the parties and the document titled "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession", I find that the Buyer asked the Landlords in writing to give notice to end the tenancies because the purchaser or a close family member of the purchaser intends in good faith to occupy the rental house.

In accordance with section 49(5) of the *Act*, I uphold the Lower Notice and the Upper Notice.

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 Notices comply with section 52 of the Act.

Therefore, I find that the Landlords are entitled to Orders of Possession effective on the effective date of the Upper Notice and the Lower Notice, that being November 30, 2024.

As the Tenants were not successful in their respective applications for dispute resolution, I find that the Tenants are not entitled to recover the filing fees paid for either application for dispute resolution, in accordance with section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlords **effective by 1:00 PM on November 30, 2024, after service of this Order on Tenant R.B.** 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.

Tenant R.B.'s application for cancellation of the Landlord's Four Month Notice to End Tenancy for Landlord's Use of Property (Four Month Notice) under section 49 of the Act is dismissed, without leave to reapply.

Tenant R.B.'s application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on November 30, 2024, after service of this Order on Tenants M.T. and S.K.** 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.

Tenant M.T. and S.K.'s application for cancellation of the Landlord's Four Month Notice to End Tenancy for Landlord's Use of Property (Four Month Notice) under section 49 of the Act is dismissed, without leave to reapply.

Tenants M.T. and S.K.'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.

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: October 16, 2024

Residential Tenancy Branch