

## **DECISION**

### **Introduction**

This hearing dealt with the Tenants' two Applications for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). In their first application, the Tenants applied for:

- cancellation of the Landlords' Four Month Notice to End Tenancy for Landlords' Use of Property (Four Month Notice) and an extension of the time limit to dispute the Four Month Notice under sections 49 and 66 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- recovery of the filing fee

In their second application, which was scheduled to be heard on the same day and time, the Tenants applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the Landlords
- recovery of the filing fee

Those listed on the cover page of this decision attended the hearing and, apart from the Landlord's legal counsel (Counsel), were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

On behalf of the Landlords, Counsel said they received the Tenants' applications, but did not receive all their evidence. Counsel said they did not receive the natural gas utility bills, the monetary order worksheet or the Four Month Notice. However, Counsel said they had a copy of the Four Month Notice. Ultimately, I determined those documents were not necessary for consideration in these matters.

The Tenant confirmed receipt of the Landlords' evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are

reproduced in this Decision. Further, only the evidence specifically relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

## **Preliminary and Procedural Matters**

Section 6.2 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) states that the arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

Using my discretion under the Rules, I will only consider the Tenants' request to cancel the Four Month Notice and 10 Day Notice in these proceedings. I dismiss the Tenants' request for monetary compensation, with leave to reapply.

Leave to reapply is not an extension of any applicable time limit.

As only JW, as tenant, and XL, as landlord, are named on the written tenancy agreement, any resulting orders issued in this proceeding will be in the listed Tenant and Landlord's names only.

## **Issues to be decided**

Should the Landlords' two Notices be cancelled or enforced?

Is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to recovery of the filing fees?

## **Background and Evidence**

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

The written tenancy agreement was formed between Applicant, JW, and Respondent, XL, for a tenancy start date of July 10, 2021, an original fixed-term ending on July 9,

2022, monthly rent of \$3000, due on the 10<sup>th</sup> day of the month and a security deposit of \$1500 paid on July 4, 2021. The rent increased to \$3050 during the tenancy.

I heard evidence that JJH is the spouse of JW and that DB is the ex-spouse of XL, who has been acting as agent for the Landlords during this tenancy while XL was living in China.

The evidence shows that the Landlord's agent, DB, served the Tenants the Four Month Notice by personal service on August 9, 2024, and the Tenant confirmed service on that date.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the landlord or landlord's spouse.

The Tenant takes the position that the parties agreed to yearly tenancies on a fixed-term basis, and that the earliest the Notice can be effective is at the end of the current fixed-term, or July 9, 2025. The Tenant said this position is supported by the Tenants paying equivalent of the annual rent in a lump sum payment in advance of the next fixed-term during the first three years of the tenancy.

Pursuant to section 7.18 of the Rules, the Landlords' Counsel proceeded first in the hearing to make submissions in support of the Notice.

Counsel submitted arguments which tracked the statements made in a written statement of DB, which is summarized as follows:

- Acting as the agent for the Landlord while they were living in China, by July 9, 2022, they verbally agreed to another 1 year, fixed-term agreement, and they accepted a cheque for \$36,000, which is 12 months at \$3000.
- By July 9, 2023, they verbally agreed to another 1 year, fixed-term tenancy agreement, and again accepted the lump sum payment of a year's rent payment.
- Throughout the tenancy, they, DB, communicated by WeChat to the Tenant, JW, who on September 27, 2023, messaged them that they, JW, were travelling to China to deal with a family matter and to contact JJH for tenancy matters.
- By April 12, 2024, the Landlord informed DB that they needed possession of the rental unit again by mid-August 2024, planning on returned to their home so that

their children, who are either Canadian citizens or permanent residents, could start school.

- On April 12, 2024, DB sent JJH a message to inform them that the Landlord and their family needed to move back into the home and for that reason, the tenancy would end by July 10, 2024.
- DB sent a WeChat message to JJH on April 11, 2024, that the tenancy was ending by July 10, 2024 as the Landlord intended on moving back in.
- DB sent a WeChat message to JW that the tenancy was ending on July 10, 2024.
- When DB had an in-person meeting, on May 15, 2024 with the Tenants, and at this point, the Tenants informed DB that the Landlord was required to serve a proper notice to end the tenancy, which at that time, was a Two Month Notice. Also at that meeting, the Tenants told them they would need to give the Tenants compensation equal to 1 month's rent, and they agreed that the rent-free period would be from July 10 through August 9, 2024, to satisfy that requirement. The parties signed the document acknowledging the compensation made and at that point, they served the Tenants a Two Month Notice.
- DB kept in contact with the Tenants to keep them informed that the Landlord was arranging to move back to Canada and moving in, which included a moving crew, cleaners, and repair persons on August 10, 2024. On August 8, 2024, the Tenants informed the Landlord they were not moving.
- When Counsel confirmed with RTB that the Notice may not be considered valid due to a technical error, they served another Notice to end the tenancy, the Four Month Notice in dispute here. The Tenant then attempted to pay the yearly rent in a lump sum of \$36,600, the Landlord refused as they were not extending the tenancy, as their intent, known to the Tenants since April, was to move back into the rental unit.
- The Tenants were informed that they now owed the monthly rent of \$3050, and that it should be paid monthly, and to date, the Tenants have refused to pay rent and have not paid any rent since the rental period of June 10, to July 9, 2024 period.

- On September 20, 2024, the Tenants were served a 10 Day Notice when it was delivered to a resident unknown to the Landlord who opened the door.

The Landlord testified and confirmed that they want to move back into the residential property which they vacated several years ago for personal reasons, and now they are ready to return so their three children can go to school in Canada. The Landlord said they do not own any other property in Canada and this is their only option. Further, they have not made any specific travel plans as they were not sure how the dispute would turn out.

In response, the Tenant questioned the Landlord's statements about not owning any other property. The Tenant said they want to stay in the property until June 2025, as they have children in the local school district, and they want to finish out the school year.

Counsel reiterated that the Landlord owns no other property, and the property the Tenant mentioned belonged DB.

### **10 Day Notice**

The Notice was dated September 19, 2024, for an effective move-out date of October 3, 2024. The Notice listed that the monthly rent of \$3050 was owed as of August 10, 2024, but not paid.

The Tenant confirmed they have not paid any monthly rent since receiving the monthly rent compensation for the rental period of July 10 through August 9, 2024; however, they explained that they attempted to pay the lump sum yearly rent of \$36,600, but the Landlord returned the cheque. The Tenant submitted that they have had yearly fixed-term agreements through their tenancy, and the Landlord served the 10 Day Notice in order to remove the Tenants before their hearing on the Four Month Notice.

Counsel submitted that the fixed-term was not renewed and that the original tenancy agreement converted the tenancy to a month-to-month after the end of the first fixed-term.

### **Analysis**

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

### **Four Month Notice**

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.

When a tenant disputes a Four Month Notice to end tenancy for landlord's use, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

I find the Notice to be completed in accordance with the requirements of section 52 of the Act and was served to the Tenants in a manner that complies with section 88 of the Act.

After hearing from the Landlord, I find that they genuinely intend to move into the rental unit, after moving back to the area from another country. I find the Landlord submitted credible and consistent testimony that they formerly lived in the residential property, moved for personal reasons, and that they are now ready to move back and live in the residential property. I was persuaded by the consistent evidence that since at least April 2024, the Landlord and DB have repeatedly told the Tenant of their plans and that the tenancy was not being renewed. I was persuaded by the Landlord's testimony that their children, who are aged 4, 8, and 15, want to either resume their schooling in Canada, or begin their schooling.

I find that there was no evidence that the Landlord acted dishonestly or had an ulterior motive when they issued the Notice seeking the end of the tenancy. I find the Landlord and agent were forthcoming with the Tenants about their plans, and the Tenants have not provided any evidence suggesting that the Landlord lacked good faith.

I therefore find that, upon a balance of probabilities, the Landlord has met their burden of proving that they honestly intend to move into the rental unit and that the Notice was issued in good faith.

I find the Notice is valid and enforceable, and as a result I dismiss the Tenants' application seeking cancellation of the Notice.

I find that the Landlord is entitled to, and I **grant** an order of possession for the rental unit effective at **1:00 pm on December 9, 2024, the effective date of the Notice.**

Should the Tenants fail to vacate the rental unit by **1:00 pm, December 9, 2024**, the order must be served to the Tenants to be enforceable and may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The Tenants are

cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the Tenants.

### **10 Day Notice**

I find the tenancy converted to a month-to-month tenancy, beginning on July 10, 2024. There is no provision under the Act for an automatic renewal of a fixed-term absent mutual agreement of the parties. In this case, the Tenants were made fully aware by the Landlords' WeChat notifications, their usual mode of communication, in April 2024, that the Landlords did not intend to renew the tenancy for another fixed-term, and that their intention was to move back to the residential property at the end of the current fixed-term of July 9, 2024. The Tenant confirmed they have not paid rent since the last payment due for June 10 to July 9, 2024.

The evidence shows the Tenants' monthly rent compensation was taken for the rental period of July 10 through August 9, 2024, and they did not owe the rent for this reason.

Beginning on August 10, 2024, as the Tenants remained living in the rental unit, they now owe the monthly rent for August 10 through September 9, 2024, from September 10 through October 9, 2024, and for October 10 through November 9, 2024, or three months rent, totalling \$9150, or three months at \$3050.

As I have issued an order of possession of the rental unit to the Landlord based upon the Four Month Notice, I decline to consider whether the Landlord is entitled to an order of possession of the rental unit based on the 10 Day Notice. This is because the Tenants did attempt to pay the rent initially as a yearly amount and the dispute was ongoing.

Having said that, I find it appropriate to grant the Landlord a monetary order in the amount of \$9150, under section 55 (1.1) and 62(3), for the three months currently owed.

For this reason, I order the Tenant to pay the Landlord the amount of \$9150, which is the total amount of unpaid monthly rent owing as of the date of the hearing,

Therefore, I find the Landlord is entitled to, and I grant, a Monetary Order for unpaid rent in the amount of \$9150.

Should the Tenant fail to pay the Landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The Tenant is advised that costs of such enforcement are recoverable from the Tenant.

The Tenant is informed that they owe the monthly rent through the end of the tenancy, and if they should fail to pay the next monthly rent due on November 10, 2024, the Landlord may serve another 10 Day Notice, and apply for an earlier end to the tenancy.

As I have dismissed the Tenants' applications, I dismissed their request for recovery of the filing fee for both applications, without leave to reapply.

## **Conclusion**

The Tenants' application for an order cancelling the Four Month Notice to End Tenancy for Landlords' Use of Property issued by the Landlord is dismissed.

The Landlord is granted an order of possession of the rental unit effective December 9, 2024, at 1:00 pm.

The Landlord is granted a monetary order in the amount of \$9150.

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 24, 2024

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Residential Tenancy Branch