

DECISION

Introduction

This hearing dealt with two Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), one from Tenant E.B., and one from Tenant B.K.C. Both applications concern the same Landlord, and the same circumstances. The applications were joined to be heard together.

The Tenant E.B.'s Application for Dispute Resolution, filed October 10, 2024, is for:

- cancellation of the Landlords' Four Month Notice to End Tenancy for Landlord's Use of Property (Four Month Notice) under section 49 of the Act

The Tenant B.K.C.'s Application for Dispute Resolution, filed October 10, 2024, is for:

- cancellation of the Landlords' Four Month Notice to End Tenancy for Landlord's Use of Property (Four Month Notice) under section 49 of the Act

Tenant E.B., Advocate Z.Z. attended the hearing for the Tenant E.B.

Advocate Z.Z. attended the hearing for Tenant B.K.C.

Landlord H.T.S.L., Landlord's Advocate T.M. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord acknowledged service of the Proceeding Package from Tenant E.B. and the Proceeding Package from Tenant B.K.C. The Landlord is duly served in accordance with the Act with both Proceeding Packages.

Service of Evidence

Based on the submissions before me, I find that the Tenant E.B.'s evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Tenant B.K.C.'s evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant E.B. and to the Tenant B.K.C. in accordance with section 88 of the Act.

Issues to be Decided

Should the Landlord's Four Month Notice to the Tenant E.B. and/or B.K.C. be cancelled? If not, is the Landlord entitled to an Order of Possession(s)?

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 the tenancy between E.B. and the Landlord began in January 2014. The Landlord holds a \$275.00 security deposit in trust for E.B. The current rent is \$1,200.00 per month.

Evidence was provided showing that the tenancy between B.K.C. and the Landlord began in January 2014. The Landlord holds a \$385.00 security deposit in trust for B.K.C. The current rent is \$800.00 per month.

The rental units are two basement suites in a home (the "Rental Units") occupied by E.B. and B.K.C. (together, the "Tenants"). There is also a suite in the upper portion of the home (the "Upper Unit").

The Landlord issued a Four Month Notices for Landlord's Use of Property in person to each of the Tenants on October 7, 2024 (the "Four Month Notices"). Both Four Month Notices state that the Landlord will occupy the rental unit, and Tenants must move out by February 28, 2025.

The Landlord testified that she and her husband used to occupy the Upper Unit but have not done so for about seven years. The Upper Unit was rented out for about two of those seven years. When those occupants moved out in March, 2024, the Landlord and her husband began to move the contents of their current residence to the Upper Unit. The Landlord sold her current residence on September 27, 2024. The buyer of that residence will take vacant possession on February 1, 2025.

The Landlord testified that she needs to take over the Rental Units on February 1, 2025 to live in the entire home. The Landlord's current residence is about 2,400 square feet, whereas the Rental Units and the Upper Unit combined are only about 2,100 square feet. The Landlord testified that at her current residence she uses all of the space to live and store her belongings.

The Landlord testified that moving to the Upper Unit and into the Rental Units will allow her and her husband to be closer to their grandchildren. The Landlord plans to provide

childcare to her grandchildren and will need the space in the Rental Units to do so. The Landlord testified that the space in the Rental Units will also be used for a home office.

The Landlord testified that the Upper Unit is accessible by stairs, and the Rental Units are on the ground floor. The Landlord's husband is in poor health and may need home support. Living on the ground floor with help the Landlord and her husband because it is more accessible. Also, if her husband needs homecare due to his health, this will be easier on the ground floor in the Rental Units.

The Landlord testified that she needs to use the whole property to live in and for storage of her belongings. The Landlord provided photos of some of her belongings.

The Tenants' Advocate Z.Z. testified that there is storage space outside that the Landlord is not currently using, so the Landlord does not need the rental units to store her belongings.

The Landlord stated that she does not own any other property. The Tenants provided Title Search Results from the BC Land Title Office, which indicate the Landlord is the registered owner of two properties. When the Landlord was asked about this discrepancy the Landlord stated that she meant that she does not own other property where she could reside because her son lives in the other property.

The Tenants' Advocate testified that this is the Landlord's fourth time trying to evict the Tenant E.B. E.B. provided copies of decisions cancelling the Landlord's previous notices to end tenancy. In two past instances the Landlord has attempted to evict the Tenant E.B. for the Landlord's Use of Property.

The Tenants' Advocate argued that the Landlord's previous reasons for needing the rental unit are inconsistent with the reasons presented in this hearing, which is an indicator of the Landlord's bad faith.

The Landlord's Advocate argued that the Landlord was not represented in the earlier hearings and no finding of bad faith was made in a previous decision about the Rental Units. The other notices to end tenancy were cancelled due to procedural errors by the Landlord.

The Tenants also provided a copy of a previous decision wherein the Arbitrator found that the Landlord had issued a Notice to end Tenancy for Landlord's Use of Property which was not issued in good faith. The rental unit in that decision is a laneway home located on the same property as the Upper Unit and Rental Units.

The Tenants' Advocate argued that, though the facts of the decision are not relevant to this hearing, the previous finding of bad faith should be considered.

Analysis

Should the Landlord's Four Month Notice to the Tenant E.B. and/or B.K.C. be cancelled? If not, is the Landlord entitled to an Order of Possession(s)?

Section 49 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 of the Act states that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 30 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the Tenant E.B. and the Tenant B.K.C. both disputed this notice on October 10, 2024, and since I have found that the Four Month Notices were served to the tenants on October 7, 2024, I find that the Tenant E.B. and Tenant B.K.C. have applied to dispute the Four Month Notices within the time frame allowed by section 49 of the Act.

I find that the Landlord has the burden to prove that she has sufficient grounds to issue the Four Month Notices.

Both Tenants 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.

The Tenants' Advocate argued that the Landlord's actions, previous finding of bad faith, and inconsistent reasons for wanting to occupy the Rental Units, add up to bad faith.

Though the Landlord was found to have issued a notice to end tenancy in bad faith on another rental unit, that is not determinative of the issues in the case before me. I am not bound by previous decisions. The Landlord has not been found to have issued a notice to end tenancy in bad faith for the Rental Units at issue in this case.

The Tenants' Advocate argued that the Landlord is inconsistent because she had previously stated that the stairs at her old residence were difficult to manage for her and her husband, yet the Upper Unit and Rental Units are divided by stairs.

I accept the Landlord's submission that the Rental Units are more accessible as they are located on the ground level. The Landlord's husband is in poor health. The Landlord was not present at the first hearing to explain her reasons for avoiding stairs. I find that this reason for wishing to occupy the Rental Units is not entirely inconsistent with the

Landlord's earlier attempts to end these tenancies. I accept that the accessibility of the Rental Units is one of the reasons she wished to occupy the Rental Units.

The Landlord has more than one reason that she wants to occupy the Rental Units. I do not find that these reasons are inconsistent with each other. I accept that the Landlord will use the Rental Units for her husband, and babysitting her grandchildren, and she will live in the Upstairs Unit as well as in the Rental Units.

Residential Tenancy Branch Policy Guideline 2A states that a landlord may end a tenancy to reclaim the rental unit as part of their living accommodation, for example to use a basement rental unit as a second living room. I accept the Landlord's testimony that the upstairs portion of the home is not large enough for her and her husband in consideration of their plans to be caregivers for their grandchildren.

On a balance of probabilities, I find that the Landlord has established that she intends in good faith to occupy the entire home, including the Upstairs Unit and the Rental Units.

Section 55(1) of the Act states that, if the Landlord's notice to end tenancy complies with section 52 of the Act, the director must grant the Landlord an Order of Possession if the Landlord's notice to end tenancy is upheld during the dispute resolution proceedings. I have reviewed the Four Month Notices and I find they comply with the form and content requirements set out in section 52 of the Act. As I have upheld the Four Month Notices, the Landlord is granted Orders of Possession under section 55(1) of the Act for each of the Rental Units.

The effective date of the Four Month Notices will remain February 28, 2025.

Conclusion

The application of the Tenant B.K.C. is dismissed without leave to reapply.

The application of the Tenant E.B. 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: November 22, 2024

Residential Tenancy Branch