



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on April 30, 2015, seeking to Cancel a 2 Month Notice to end tenancy issued for landlord's use and to obtain an Order to have the Landlord comply with the Act, regulation, or tenancy agreement.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant who each gave affirmed testimony. The Tenant confirmed receipt of the Landlord's documentary evidence; however, the Landlord stated she only received part of the Tenant's evidence package. A detailed review was conducted of all of the documents the Landlord stated she received from the Tenant. The Landlord submitted that she did not receive the last 30 pages of the Tenant's evidence package beginning with the 2 Month Notice dated March 5, 2015. She argued that she only received one package which was stapled frontwards and backwards.

The Tenant affirmed that he gave copies of the exact same documents in identical packages to both the Landlord and the Residential Tenancy Branch (RTB). He asserted that he has disputed 6 eviction notices now and that this has been going on since 2012. He argued that during these hearings it is "always one thing or another with the Landlord", such as not getting evidence he served.

I noted that the documents which the Landlord alleged were not received were in fact documents and Decisions that related to the previous eviction notices and the hearings relating to those notices. After careful consideration of the submissions from both parties I favored the Tenant's submission that he had served two identical packages, one to the RTB and one to the Landlord. I favored the Tenant's submission over the Landlord's submission that she did not receive all of the documents because the Tenant's submission was forthright and credible and his evidence was in a logical order.

That being said, the 30 pages which the Landlord had alleged was not received for this matter, were evidence documents from previous hearings that the Landlord either issued, had been served by the Tenant for previous hearings, or Decisions sent to both parties from previous hearings, which formed part of the RTB official record. I explained to both parties during the hearing that I would be considering all documentary evidence and oral testimony submitted from both parties.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Should the 2 Month Notice to End Tenancy issued on April 16, 2015 be upheld or cancelled?
2. Should the Landlord be ordered to comply with the Act, regulation, or tenancy agreement?

#### Background and Evidence

The Tenant testified that he entered into a verbal tenancy agreement with the previous owners which began on approximately June 22, 2002, at which time the owners signed his "intent to rent form" for income assistance. His rent is payable on or before the first of each month in the amount of \$450.00 and on June 22, 2002 he paid \$225.00 as the security deposit.

The Landlord confirmed that the previous owners were her parents and that her parents still reside in the house. She purchased the property from her parents in March 2013. The Landlord testified that there are three levels in the house, the top level has a two bedroom self-contained suite, the main level suite is where her parents reside which includes 2 bedrooms, bathroom, living room, dining room, kitchen, on the main level plus 1 bedroom, a den, and laundry room in the basement, which is separate from the Tenant's rental space located in the basement.

The Landlord submitted that the Tenant's rental area is located in the basement but that it is not a basement suite. She stated that the Tenant's area has a separate entrance and two bedrooms, a bathroom, and a common area. The Tenant has one bedroom with a hot plate and fridge in his room and shared access to the bathroom and common area. The other bedroom was rented to another tenant under a separate agreement however he passed away in December 2014. The Landlord stated that no one else moved into the deceased tenant's room as he died in that room and they had to remediate the room after he had been found, several days after he has passed away.

The Tenant testified that eight hours after they had attended the previous dispute resolution hearing on April 16, 2015, the Landlord served him the 6<sup>th</sup> eviction Notice by posting it to his door that same day. He noted that it was not personally served to him as written on the bottom of the Notice.

The Landlord testified that she had attempted to personally serve the Tenant with the Notice and when he refused to open his door she taped the Notice to his door on April 16, 2015.

The Landlord submitted that she did not attend the December 2014 hearing regarding the first Notice she served the Tenant because she was out of town. The first hearing she attended was in April 2015 which is when she found out she did not submit proper documents to prove her situation. She now asserts that she has submitted enough documents to prove their financial situation and which supports that their business is not doing well and they need to move back into their home.

The Landlord testified that they had owned another home which they sold and on May 15, 2014 they moved into the house they are currently renting. She stated that they are paying a high rent of \$5,000.00 per month which they could afford by renting rooms out to two university students. The students have left so they need to evict this Tenant so they can give their notice to their landlord and move into the main level of their home. They plan to repair the basement for her parents to reside in when they return from their trip out of Canada. She stated that her parents will have their bedrooms in the basement and will have meals with her family on the main floor.

The Landlord argued that it was very degrading for them to have to share their financial situation with the Tenant and the RTB. She asserted that the documents submitted into evidence prove that their business is not doing well and that they were facing foreclosure on the rental house. She indicated that her 77 year old father has since paid off the amount owing to the mortgage company to prevent the foreclosure and she now has to pay back her father.

The Landlord confirmed that she had assisted her parents in trying to evict this Tenant in the past when they owned the house but those evictions were for different reasons. She stated that she has attempted to evict the Tenant three times since December 2014 for unrelated issues and that her reasons relate to her financial situation.

The Tenant argued that the Landlord's parents have gone out of the country every year for the past 12 years and they always leave around this time and never come back until November or December. He submitted that he is intending to move sometime in the future if he can get his disability payments approved and only if he is able to find a safe place to live.

At this point in the hearing the parties were given the opportunity to try and settle these matters. However, the parties were too far apart and were not able to settle on a mutual

agreed upon date to possibly end this tenancy. As a result the hearing reverted back to arbitration and the Tenant was given the opportunity to present the rest of his evidence.

The Tenant noted that the Landlord had testified that the foreclosure has been paid off by her dad. He questioned when that payment had been and why he would have to move now that it was no longer an issue. The Tenant also noted that the banking information lists only the Landlord's name and does not include her husband or their company. He argued that these documents do not represent their full financial situation.

The Tenant testified that the Landlord's parents have no intention of living in the basement because they have lived on the main level for 45 years and they cannot handle stairs. He argued that he had been told in the past that the Landlord's parents were originally going to live in the upper two bedroom suite and that was changed because they could not handle the stairs to get up to that suite. He further argued that the Landlord wants him out so they can renovate the unit and rent it out for a much higher rent which is what they did with the upper suite.

The Tenant asserted that the municipality does not allow someone to live in the basement as per the document he submitted in his evidence. The Tenant stated that during the last hearing the Landlord had told the arbitrator that she had received the foreclosure statement on the date of the hearing however the one submitted in evidence is not dated until April 22, 2015.

The Tenant submitted that the top floor tenants moved out in April 2015 and the new tenants moved in right away. He argued that the Landlord is not trying to evict him so her parents could move into the rental unit and he noted that they refuse to fix anything, as proven by the photographs he provided in his evidence. He also noted that in the previous Decision the Arbitrator told the Landlord she would be found to be harassing him if she issued another Notice. He would like to have the Landlord stop issuing him eviction notices and asked that she conduct repairs to his rental unit.

I explained to both parties that this hearing was not convened to hear matters pertaining to the required repairs. I advised the Tenant that he would be required to put his repair requests in writing to the Landlord. Then if the repairs were not completed in a timely fashion then the Tenant may file an application to seek an order from the RTB to have the repairs completed. I recommended that both parties review the Act to determine their rights and obligations respecting repairs and allowing the landlord access to the rental unit for the purpose of conducting repairs.

The Landlord confirmed that their top floor tenants gave notice to end their tenancy on February 1, 2015 and were fully vacated by March 30, 2015. The unit remained vacant until April 25, 2015 until the new tenants moved in. She stated that her bank accounts are joint accounts but only her name shows on the statement because her name was the first on the account. She pointed to the other document in her evidence and argued that it proved that they are behind on their PST submissions and combined with their foreclosure statement proves their financial situation. She stated that although her

father paid off the amount owed for the foreclosure she still has to pay her father back. The Landlord disputed the Tenant's submission and argued that her parents were returning in September or October 2015 and not December.

The RTB record indicates that on page 4 of the April 27, 2015 Decision, which pertained to the April 16, 2015 hearing, the arbitrator wrote as follows:

*The Landlord is warned that issuing any further invalid notices to end the tenancy may be found to be harassing the Tenant.*

[Reproduced as written]

### Analysis

After careful consideration of the totality of events listed above, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Upon review of the 2 Month Notice to End Tenancy I find the Notice was served upon the Tenant in a manner that complies with section 89 of the Act; however, I further find the Notice was not completed in accordance with the requirements of section 52 of the Act as the Landlord did not date when she signed the Notice. That being said, there was undisputed evidence that the Notice was issued on the same date of the previous arbitration hearing which is the same date the Landlord wrote on the bottom of the Notice as to when it was served. Therefore, I amend the Notice pursuant to section 68(1) of the Act.

Where a 2 Month Notice to End Tenancy comes under dispute, the Landlord has the burden to meet or satisfy a two part test as set forth under the Act. 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.

The *Residential Tenancy Policy Guideline # 2* sets out the two part test for the “good faith” requirement as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and
- 2) the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party with the burden to prove the reasons for issuing the Notice to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party who bears the burden of proof would fail to meet this burden.

The issuance of this third 2 Month Notice by this Landlord is not a mere coincidence and cannot be considered separately from the eviction notices issued by the Landlord's parents, as this Landlord assisted her parents with those previous eviction notices. That being said, I recognize that there are occasions in which the passage of time or a change in circumstances may create an entirely new environment which was not part of the reasons for previous eviction notices, or that the Landlord simply did not submit enough evidence in previous matters to uphold the reasons for issuing the Notice. However, after considering the 2 Month Notice issued April 16, 2015 on its merits, I do not find that there was sufficient evidence to prove that the issuance of the most recent 2 Month Notice was driven solely by the owner's alleged need to move into their parent's suite and have their parents reside in the basement rental unit.

I make the above finding in part due to the following reasons. First, the property is no longer in foreclosure and although the Landlord has testified that she must repay her father for the money he allegedly gave her, there was no evidence to prove the details of any repayment agreement. Secondly, if the Landlord's situation was as dire as she asserted then why is it that they decided to re-rent the upper rental unit when it became vacant on March 30, 2015, especially since they have been trying to evict the lower tenant for their own use since December 2014.

I find that it is reasonable to conclude that if the Landlord's situation was so urgent they could have given their notice to end their own tenancy with their landlord when the upper unit was vacant as they could arrange to have her parents occupy the upper rental unit when they returned to the country after their 4 or 6 month absence. If they did not want her parents to occupy the upper suite they still could have incorporated that space into their family home and had her parents continue to live with them leaving them in their own bedroom on the main level while the Landlord's family occupied the other bedrooms, (2 upper, 1 main floor, and 1 in the basement), without having to evict the Tenant.

In addition to the above, I note that the Landlord did not submit any documentary evidence to prove that they are in fact renting their current residence and did not submit evidence to prove who the property owner of that residence was. Also, I accept the

Tenant's submissions that the bank statement submitted by the Landlord is not sufficient proof of the Landlord's financial situation, due in part to the fact that it only lists the Landlord's name. Also, the bank statement only displays the balances on these accounts on a certain date and does not show recent transactions.

Notwithstanding the Landlord's submissions, when I consider the current condition of the rental unit, the previous failed evictions, and the fact that the Landlord's parents have established a pattern of going out of the country for six months every year and returning to their home of 45 years, I accept the Tenant's submission that the Landlord wants him out so they can renovate the rental unit and re-rent it. This is also supported by the fact that the Landlord is attempting to evict the Tenant now, even though her parents are out of the country for the next 4 to 6 months.

Furthermore, given the nature of this tenancy over the past 12 years, I conclude that it is highly unlikely that the Landlord's intentions are to have her parents live in the basement of this home. It is not enough to simply say that the Landlord's family intends on residing in the rental unit upon their return to the country to prove the test for good faith.

Based on the above, I find the Landlord provided insufficient evidence to meet the two part test to uphold the 2 Month Notice to end tenancy. Accordingly, I find in favor of the Tenant's application and I cancel the 2 Month Notice to end tenancy issued April 16, 2015.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

At first glance of the photographs provided in the Tenant's evidence, I conclude that the rental unit is in need of some repairs. Accordingly, I grant the Tenant's request and I order the Landlord to comply with the *Act*, regulations and/or tenancy agreement.

### Conclusion

The Tenant has been successful with his application and the 2 Month Notice to end tenancy for landlord's use issued April 16, 2015 is HEREBY CANCELLED, and is of no force or effect. This tenancy continues until such time as it is ended in accordance with the *Act*.

I HEREBY ORDER the Landlord to comply with *Act*, regulation, and/or tenancy agreement, pursuant to section 62 of the *Act*.

The Landlord was previously warned in the April 27, 2015 Decision that issuing any further invalid notices to end the tenancy may be found to be harassing the Tenant. I agree with that warning and now conclude that the Tenant will be at liberty to file an

application for Dispute Resolution to seek monetary compensation for loss of quiet enjoyment due to harassment if any further attempts are made to end the tenancy for unlawful reasons or in bad faith.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 15, 2015

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Residential Tenancy Branch



