



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT, PSF

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on July 3, 2018, wherein the Tenants sought an Order canceling a 2 Month Notice to End Tenancy for Landlords' Use issued on June 27, 2018 (the "Notice"), an Order that the Landlords provide services or facilities required by law (specifically internet access) and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on August 27, 2018.

The Applicant Tenants called into the hearing as did an articulated student on behalf of the Landlord. The Landlord did not call into the hearing. Those present were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

### Preliminary Matter—Landlord's Evidence

During the hearing the Landlord's Agent stated that they served the Tenants with their evidence on the Friday before the hearing (August 24, 2018). He claimed that the Residential Tenancy Branch website makes no mention that a party's evidence needs to be sent to the other party. He also confirmed that the Landlord's evidence was "not essential" to this hearing.

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. Rules 3.15 and 3.16 provide as follows:

#### **3.15 Respondent's evidence**

To ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible.

The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

In the event that evidence is not available when the respondent submits and serves their evidence, the Arbitrator will apply Rule 3.17 [*Consideration of new and relevant evidence*].

See also Rules 3.7 [*Evidence must be organized, clear and legible*] and 3.10 [*Digital evidence*]

### **3.16 Respondent's proof of service**

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the Arbitrator that each applicant was served with all their evidence, as required by the Act.

Information is also provided on the Residential Tenancy Branch website in which participants are instructed how to apply for Dispute Resolution as well as how to prepare, submit and serve evidence on the other party. The following is a screenshot taken from the site under the heading "How do I prepare my evidence":

#### **Submit My Evidence**

You can upload evidence by submitting it directly into your Online Application for Dispute Resolution.

Don't have all of your digital evidence ready but still want to apply? When you submit an application, you will receive a unique Dispute Access Code. This code will allow you to upload evidence after you have submitted your application.

Don't forget, you must also provide copies of your evidence to the other party--either on paper or digitally.

- Learn more about [requirements for digital evidence](#)

Finally, one of the principals of Natural Justice is that a party to a dispute has the right to know the claims against them and an opportunity to respond to such claims. This includes being provided any evidence upon which the claimant intends to rely. It is the responsibility of the parties to serve the other party with their evidence.

The evidence submitted by the Landlord's Agent was filed and served outside the time imposed by *Rules*. While I may consider new and relevant evidence pursuant to *Rule* 3.17, the Landlord's agent failed to make any submissions which would support a finding that the evidence is new and relevant and was not available at the time they were to file and serve their evidence. I therefore decline to consider the evidence filed

by the Landlord on August 24, 2018. Although the Landlord's Agent did not ask for an adjournment, I note he indicated this evidence was not "essential" to this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to provide internet access to the Tenants?
3. Should the Tenants recover the filing fee?

### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though in the hearing before me the Tenants applied for dispute resolution and are the Applicants, the Landlord's agent presented the Landlord's evidence first.

The Landlord's agent submitted as follows. He confirmed that the tenancy began in April of 2017, although he was not able to provide the exact date noting that no formal written agreement was entered into by the parties. He stated that monthly rent is payable in the amount of \$900.00.

The Notice was issued on June 27, 2018 and posted to the rental unit on June 27, 2018. The effective date of the Notice is August 31, 2018 and the reasons cited on the Notice are as follows:

The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child, or the parent or spouse of that....)

The Landlord's agent stated that the Landlord and her husband intend to use the rental unit for two businesses that they operate. He claimed that their business has grown and

they can no longer operate their business out of the “back room” of one of the businesses and now require the basement of their home.

In their Application for Dispute Resolution the Tenants allege the Landlord wants to evict them because she wants them to pay higher rent and they refused.

The Landlord’s Agent confirmed that the Landlord disputes this allegation. He stated that the only reason the Tenants are residing in the suite is due to a friendship between the Landlord and the mother of one of the Tenants, and that the Landlord agreed to let the Tenants reside in the rental unit for a year at “half the fair market value” of the rent until they could “get things going” and as a “favour” to the Tenants. He stated that she now feels that she is being taken advantage of.

The Landlord’s agent further stated that the Tenants were supposed to provide a \$450.00 security deposit at the beginning and did not. He also alleged that the Landlord tried to get the Tenants to sign a tenancy agreement and they refused.

The Landlord’s Agent drew my attention to the letter from the Tenants’ dated May 22, 2018 wherein the Tenants write to confirm the terms of the tenancy; the Agent submitted that this letter was merely the Tenants’ demands, and not reflective of the agreement between the parties. In response to that letter the Agent submitted as follows:

- In this letter the Tenants write that the rent was \$900.00 per month; the Landlord’s Agent confirmed the Tenants have been paying \$900.00 per month via interac e-transfer.
- The Tenants also write that no security deposit was payable; the Landlord’s Agent stated that the Tenants were in fact to pay security deposit.
- The Landlord’s Agent agreed that the Tenants were not to pay a pet damage deposit as noted in the Tenants’ letter.
- The Tenants write that internet was provided by the Landlord. The Landlord’s Agent submitted that the internet was not provided “from day one”. He stated that the Tenants had been to the Landlord’s home socially on prior occasions and they obtained the wifi password by taking a photo of the Landlord’s wifi password while at their home.

- The Landlord's Agent agreed that the Tenants pay their own electrical utility.
- The Landlord's Agent agreed that parking was included.
- The Tenants write that they were to have access to the exterior storage shed; the Landlord's Agent stated that he did not have any instructions with respect to the exterior storage shed.

In response to the Landlord's Agent's submissions, E.S. testified as follows.

E.S. stated that they do not believe that the Landlord intends to operate their business out of the rental unit. E.S. stated that they believe the Landlord only wants to evict them because they refuse to pay "market rent" when she demanded they do so. The Tenants provided in evidence copies of text communication from the Landlord wherein she writes that they could either pay more and stay, or move out.

E.S. stated that the Landlord agreed to rent to them at a lower monthly rent so that they could save money. E.S. stated that the agreement was that they would be there for approximately three years so they could save to buy a place. E.S. further testified that there was no agreement that rent would raise after any set time.

E.S. stated that the internet was included in the rent. He drew my attention to text messages with the Landlord in February of 2018 wherein the parties discuss problems with the internet.

In response to the Landlord's Agent's submissions that they have "refused to sign a tenancy agreement", E.S. stated that was not true and they were in fact waiting for her to draw up a tenancy agreement and they would have signed one.

E.S. stated that the Landlord agreed they could use the storage shed for personal storage and confirmed that they have used the storage shed throughout the tenancy.

E.S. stated that they have exclusive possession of the rental unit; he stated that the Landlord does not come into the rental unit "freely" and gives them notice.

E.S. confirmed that they pay the electrical utility.

E.S. stated that the first time they heard about the Landlord wanted to use the rental unit for their business was Friday August 24, 2018 when they received her materials in response to this application.

The Tenant, P.W., also testified. She confirmed that the electrical utility was in her name and that they pay \$52.28 every two months.

P.W. stated that her mother and the Landlord were friends. She also stated that her mother and the Landlord got into an argument in approximately January 2018 at which time the "situation" with the Landlord "started". P.W. confirmed that she has known the Landlord for approximately two years. She confirmed that the Landlord was friends with her mom and she didn't really know her.

P.W. stated that she was aware the Landlord had recently received approval for one of their businesses in another municipality, but she did not hear anything about the Landlord moving their business into the rental unit until receiving the Landlord's evidence on August 24, 2018. She reiterated her belief that the Landlord simply wants to increase the rent and when they refused she issued the Notice.

P.W. also stated that the Landlord did not ask for a security deposit, although they did offer a pet damage deposit because they have a dog and the Landlord refused and said "no, don't worry about it, you're family".

In reply to the Tenants' submissions, the Landlord's Agent confirmed that the Landlord did not inform the Tenants as to her reasons for wanting the rental unit back. He stated that the Landlord did not, in any way, agree to a three year term for "pennies in rent compared to what they could get". He stated that they were getting \$2,000.00 per month in rent prior to the tenancy.

The Landlord's Agent stated that the agreement was for 1 year only.

### Analysis

As noted, the Landlord bears the burden of proving the reasons for ending the tenancy on a balance of probabilities.

Hearings before the Residential Tenancy Branch are *viva voce*, or oral hearings, and the parties are expected to attend, give affirmed testimony and be subject to cross examination. While *Residential Tenancy Branch Rule 6.7* specifically provides that a

party to a dispute resolution hearing may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation, this does not discharge the burden of proof.

In the case before me the Landlord did not call into the hearing; rather her agent called in and made submissions on her behalf. Conversely, the Tenants called in and gave affirmed testimony.

In a recent decision of the Ontario Court of Appeal, *Mwanri v. Mwanri* 2015 ONCA 843, the Court held that “[s]ubmissions by counsel are not evidence. They are simply submissions and nothing more.” The Landlord did not testify as to her intentions, nor did she make herself available to answer questions regarding the Notice.

The Tenants allege the Notice was not given in good faith. They allege that the real reason the Landlord seeks to end the tenancy is to facilitate raising the rent.

*Residential Tenancy Branch Policy Guideline 2--Ending a Tenancy: Landlord's Use of Property* provides in part as follows:

### **C. 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 legislation or a tenancy agreement. 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 BC Supreme Court found 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. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

...

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy.

The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

The Tenants submitted in evidence electronic communication between the parties. In one such text message, dated April 22, 2018 at 7:04 p.m., the Landlord writes:

“By the end of this month you can either leagally stay in this house with your deposit and the normal rent. Or start looking for houses and move in the next two months.”

[Reproduced as Written]

I accept the Tenants’ affirmed testimony that the Landlord issued the Notice after they refused to pay a higher rent. I am persuaded by her text message reproduced above that she would not have issued the Notice had they agreed to pay. As such, I find her ulterior motive is to increase rent.

The evidence submitted by the Landlord’s Agent regarding her desire to move her businesses into the home was minimal at best. As noted, the Landlord was not in attendance to answer questions regarding this claim. I am not persuaded by the evidence before me that this is her true intention.

The Landlord’s agent stated that the Landlord felt taken advantage of by the Tenants. While the Landlord may have permitted the Tenants to move into the rental unit as a result of her friendship with one of the Tenant’s mother, this does not release her from her obligations under the *Act*.

**I therefore find that the Tenants’ Application should be granted and the Notice should be cancelled. The tenancy shall continue until ended in accordance with the *Act*.**

The evidence submitted by the Tenants confirms that internet access was included in the rent. The parties communicated about the wifi in February of 2018 wherein the Landlord kept the Tenants apprised of the wifi problems and repair. This communication suggests to me that she was aware the Tenants were using the wifi and was keeping them apprised of the situation. Her Advocate’s submission that they surreptitiously obtained this information is not plausible in light of the text messages between the parties.

I therefore grant the Tenants’ request pursuant to section 62(3) of the *Act* and make the following Orders:



1. By no later than September 21, 2018, the Landlord shall provide the Tenants with internet access.
2. Should the Landlord refuse, the Tenants may obtain their own internet access and are authorized pursuant to section 65(1) of the *Act* to reduce their rent by the monthly cost of the internet access

As the Tenants have been substantially successful I also grant their request for recovery of the filing fee. They may reduce their next month's rent by \$100.00.

Pursuant to sections 13 and 62(3) of the *Act*, I also Order as follows:

3. By no later than September 21, 2018, the Landlord shall prepare a Residential Tenancy Agreement for the Tenants' signature.
4. The Landlord must provide the Tenants with a fully executed copy of the Residential Tenancy Agreement within 21 days of it being signed by both parties.
5. The Residential Tenancy Agreement must contain the standard terms and shall also include the following:
  - (a) The tenancy is a month to month tenancy which began April 1, 2017.
  - (b) Monthly rent is \$900.00 per month payable on the 1<sup>st</sup> of the month.
  - (c) The Tenants pay rent via interact e-transfer.
  - (d) No security or pet damage deposit is payable.
  - (e) The payment of rent includes internet access.
  - (f) The Tenants are responsible for paying their own electrical utility.
  - (g) Parking is included as a term of the tenancy.
  - (h) The Tenants have access to the exterior storage shed.

Conclusion

The Tenants Application to cancel the Notice is granted.

The Tenants' Application for an Order that the Landlord provide internet access is granted.

The Tenants are entitled to reduce their next months' rent by \$100.00 representing recovery of the filing fee.

The Landlord must prepare a written tenancy agreement in accordance with this Decision.

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: September 6, 2018

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Residential Tenancy Branch