



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      **CNL FFT MNDCT**

### **Introduction**

This hearing dealt with the **tenant's** application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$34,767.45 pursuant to section 67; and
- authorization to recover the filing fee for this application from the **landlords** pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was represented by an agent ("**TS**") and the landlord was represented by counsel ("**BB**"). The landlord's wife attended the hearing as well.

### **Preliminary Issue – Severing of Claim**

The tenant's monetary claim involves seeking compensation for loss of quiet enjoyment. The tenant did not articulate a connection between the monetary claim and the claim to cancel the Notice.

Rule of Procedure 2.3 states:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the two claims made in the tenant's application are not related. Accordingly, I order that the tenant's claim for a monetary award for \$34,767.45 is dismissed, with leave to reapply.

The balance of this decision will address the tenant's claim to cancel the Notice and recover her filing fee.

### **Preliminary Issue – Service of Documents**

The **tenant** testified that she served the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on November 16, 2019. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The landlord did not accept delivery of this document when it was delivered to him. Additionally, he testified that he was not able to retrieve it from the post office (the reasons for this are unclear to me). BB eventually contacted the residential tenancy branch and requested copies of the tenant's application and evidence on December 17, 2019. He stated that they delivered him copies of the documents on December 30, 2019.

Sections 88 and 89 do not require the documents served by registered mail be retrieved by the intended recipient, only that they be sent. In this case, I find that the tenant sent the application package on November 16, 2019. Accordingly, pursuant to sections 88, 89, and 90 of the Act, I find that the landlord is deemed to have been served with these documents on November 21, 2019, five days after they were sent.

The landlord testified that he only served copies of his documentary evidence relating to monetary claim. He testified that he did not serve the tenant with any copies of documents relating to the cancellation of the Notice.

As such, and as I have dismissed the tenant's monetary claim, I find that the landlord has failed to serve the tenant with copies of his documentary evidence in accordance with the Act, or at all. As such, I will not consider any documentary evidence provided by the landlord. The landlord gave testimony at the hearing, and I will rely on this evidence.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) the cancellation of the Notice; and

2) recover her filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2014. The rental unit is a townhouse which is attached to a neighboring townhouse in which the landlord and his wife reside. Monthly rent is \$1,119.30 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$350 and a pet damage deposit of \$100. The landlord still retains these deposits.

Both the landlord and his wife are elderly (89 and 82 respectively). They are both scheduled for significant medical surgery in the near future (the landlord for a hip replacement, and his wife in connection with her cancer treatment). BB submitted that they will both require in home care following their surgery for some number of months (the duration was not certain at this time).

Accordingly, BB stated, the landlord served the Notice on the tenant on October 24, 2019. The Notice had an effective date of December 31, 2019. It stated that "the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse).

BB stated that the landlord's granddaughter and her son (that is, the landlord's great-grandson) intend to move into the rental unit to look after the landlord and his wife following the surgery.

Additionally, BB stated that the landlord intended to use the rental unit as storage for a number of his possessions currently stored in a storage locker.

The tenant testified that she did not believe this was the reason the landlord wanted to end the tenancy. She testified that the landlord did not like that she was taking in roommates, and that he believed that this was a breach of the tenancy agreement. She entered into evidence two letters from the landlord's lawyer (not BB, but another from BB's firm). The first letter, dated June 28, 2019, states:

Take notice that [the landlord] has reasonable cause to believe you have contravened your Residential Tenancy Agreement. According to the said Agreement, you are the only occupant allowed to live in the premises, unless there is written consent from the landlord. [The landlord] has not given written consent for any additional occupants and he has reason to believe there are other persons living in the premises without his consent. Subletting the premises without the written consent of the landlord is sufficient cause for eviction under section 47(1)1 of the Residential Tenancy Act.

The second letter, dated September 9, 2019, states:

The landlord confirms that there is no tenancy agreement for the unauthorized occupant, known as [redacted], who is residing in your premises. Having unauthorized occupants in the premises is a breach of your tenancy agreement. In order for you and [redacted] to remain in the premises, you are both required to sign a new tenancy agreement.

Under the new tenancy agreement, the rent will be increased to \$2,000.00 per month and the tenant will be responsible for their portion of utility charges as previously discussed.

The landlord will allow 30 days for both you and [redacted] to enter into a new tenancy agreement and pay 50% of the legal costs for the preparation, negotiation and execution of the tenancy agreement. You must contact our office and execute the new tenancy agreement by 10 October 2019.

If you fail to take the necessary steps by the above stipulated date you will be issued an eviction notice for breach of the tenancy agreement.

The tenant testified that she declined to enter into any new tenancy agreement. She testified that she was not served with a one month notice to end tenancy for cause, but rather was only served with the Notice.

The landlord did not dispute that his lawyer sent these letters. Additionally, BB stated at the outset of the hearing that the relationship between the parties was “problematic” and that they had “historical problems”. However, he argued that these issues are not

relevant to the case at hand, as they do not relate to the reasons why the landlord issued the Notice.

BB argued that cancelling the Notice would be prejudicial to the landlord and his wife as they are relying on receiving in-home care from their granddaughter following their surgeries.

TS argued that the Notice should be cancelled for two reasons. The first being that the landlord's granddaughter does not meet the definition of "close family member" as set out at section 49(1) of the Act. The second being that the landlord issued the Notice for reasons other than those specified on the Notice, namely the dispute relating to the tenant having roommates.

### **Analysis**

Section 49(3) of the Act states:

#### **Landlord's notice: landlord's use of property**

(3) 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.

Section 49(1) of the Act defines "close family member":

**"close family member"** means, in relation to an individual,  
(a) the individual's parent, spouse or child, or  
(b) the parent or child of that individual's spouse;

Policy Guideline 2A considers the meaning of "good faith". It states:

#### **B. GOOD FAITH**

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

Based on the evidence of the landlord, I find that he issued the Notice so as to provide a place for his granddaughter to live while she tended to him and his wife following their surgeries. I do not, however, find that this was the sole motivation of the landlord for issuing the Notice.

I find that prior to issuing the Notice, the parties were in a dispute relating to the issue of whether the tenant was permitted to have roommates. I find that the landlord's lawyer warned the tenant that the landlord would issue an eviction notice for breach of the tenancy agreement (that is, a one-month notice to end tenancy for cause) if the tenant did not enter into a new tenancy agreement at an increased level of monthly rent.

I explicitly make no findings as to whether the tenant is permitted to have roommates under the current tenancy agreement.

I agree with the tenant's argument that the landlord's granddaughter is not a "close family member" as defined by the Act. Section 49(1) clearly sets out the classes of individuals to whom this designation applies. Grandchildren are not of this class. As such, I find that the Notice was not issued for the purpose of allowing a close family member to reside in the rental unit.

Based on the communication from the landlord's lawyer, I find that the landlord in the month prior to issuing the Notice asserted that the tenant was in breach of the tenancy agreement and warned that he may evict her on this basis. I find that this amounts to an ulterior motive of the landlord for issuing the Notice. I do not find that the landlord is untruthful when he says his granddaughter intends to move into the rental unit. Rather, I find that the landlord's desire to end the tenancy due to his conflict with the tenant was a factor in issuing the Notice. This is not permitted as, per Policy Guideline 2A, an ulterior motive amounts to a lack of good faith when issuing the Notice.

As such, it is unnecessary for me to determine if the landlord's intention to use the rental unit as storage is to be considered "occupying" for the purposes of the Act. Even if this were the case, the landlord would have two ulterior motives for issuing the Notice

(so that the granddaughter can move in, and to end the tenancy for breach of the tenancy agreement).

For the preceding reasons, I find that the Notice is invalid and of no force and effect.

As the tenant has been successful in her application, I order that the landlord reimburse her the filing fee of \$100. Pursuant to section 72(2) of the Act, I order that the tenant may withhold \$100 from her next month's rent in satisfaction of this amount.

### **Conclusion**

I grant the tenant's application and order that the Notice is cancelled. The tenancy shall continue.

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: January 6, 2020

---

Residential Tenancy Branch