



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Max Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNL, MNRT, MNDCT, OLC, RP, AS, RR, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed that they received the 1 Month Notice emailed to them and sent by registered mail to an incorrect mailing address on July 8, 2020. They also confirmed receipt of the landlords' 2 Month Notice, sent to them by registered mail on July 9, 2020. I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*.

As Landlord Representative WL (WL) confirmed that the landlords received a copy of the tenants' dispute resolution hearing package on or about July 15, 2020, I find that the landlords were duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Preliminary Issue – Unrelated Issues

Residential Tenancy Branch (RTB) Rules 2.3 and 6.2 allow an arbitrator to consider whether issues are related and if they would be heard at the same time. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Although I advised the parties at the commencement of the hearing that I would attempt to deal with as many issues as possible during the time allotted, I observed that the issues of most immediate concern at that this point were whether or not this tenancy would continue. Both parties agreed with my assessment that the notices to end tenancy were of primary importance in this application. For that reason, I exercised my discretion pursuant to the above-noted Rules and gave priority to hearing the tenants' applications to cancel the 1 Month and 2 Month Notices issued to them by the landlords. The issues of seeking compensation for monetary loss arising out of this tenancy were not sufficiently related to the tenant's application for cancellation of the landlords' notices to end tenancy and I dismissed those with leave to reapply.

The tenant gave sworn testimony supported by written evidence that they continue to have problems with the tenant living in the lower rental suite, problems that have required police attendance at the rental unit repeatedly. The tenant noted that these problems have escalated in recent weeks, and that the landlords' representatives have done little to intervene. As concerns with the behaviours of the tenant in the lower suite were not part of the tenants' original application and have occurred primarily in the period following the tenants' application for dispute resolution, I advised the tenant that I would be unable to include such concerns within the context of their existing application for dispute resolution.

Preliminary Issue – 1 Month Notice

Since the landlords had issued notices to end this tenancy on successive days, I asked the landlords' representatives to clarify their intent with respect to these notices to end tenancy. WL testified that after receiving feedback from the tenant that the tenants were intending to apply to cancel the 1 Month Notice and advising the owner of the property JFZ (the landlord) of the tenant's intentions, the landlord advised WL that they would use the rental property themselves. On that basis, WL said that the landlords were seeking an end to this tenancy on the basis of the 2 Month Notice, and not the 1 Month Notice. WL withdrew the 1 Month Notice. I confirmed that the landlords no longer wished to proceed with the 1 Month Notice. On that basis, I allowed the tenants' application to cancel the 1 Month Notice.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

On September 9, 2018, Tenant JMG-D (the tenant) and two other persons, who are not listed as Applicants in the current matter, signed a month-to-month Residential Tenancy Agreement (the Agreement) with the landlord for a tenancy that enabled them to occupy this entire furnished house on October 1, 2018. According to the terms of that Agreement, monthly rent was set at \$3,988.00 per month, payable in advance on the first of the month, plus utilities. The landlords continue to hold the \$1,994.00 security deposit paid on October 1, 2018.

The tenant gave undisputed sworn testimony that one of the original tenants vacated the premises in September 2019, and the other left a month later. The tenant said that the landlord(s) or their representatives gave them authorization to find replacement tenants, one of whom was Tenant CS. Tenant CS also recently vacated the rental unit on July 31, 2020. At some point in time, the rental property was subdivided into two separate tenancies. The tenant and Tenant CA currently reside in the upper suite; another person lives in the lower suite, an area no longer part of the original Agreement.

The tenant gave undisputed sworn testimony that at no time have more than three people resided in the upper rental suite, although at times they have had short-term guests visiting them.

The tenants entered into written evidence a great deal of material with respect to their current application, as well as a previous application settled at an April 30, 2020 hearing before a different Arbitrator appointed pursuant to the *Act* (see above). In that April 30, 2020 decision, entered into written evidence by the tenants, the presiding Arbitrator outlined the agreed terms of settlement as follows:

...Both parties agreed to the following final and binding settlement of the repair issues currently under dispute at this time:

- 1. The landlord agrees to replace the rotted main access stair risers and stringers on 24 hours notice to the tenant.*
- 2. The safety tread on the gangway to the dock will be replaced by the landlord on 24 hours notice to the tenant.*
- 3. The landlord agrees to do whatever repairs are required to the eaves including refastening them to the home upon the tenant providing photographs of the damaged eaves to the landlord.*
- 4. The landlord agrees to inspect the water damage between the bedroom and washroom wall on the east face of the home after the Covid-19 state of emergency is lifted on 24 hours notice to the tenant.*
- 5. Yearly maintenance to the furnace and water filtration systems will take place after the Covid-19 state of emergency is lifted on 24 hours notice to the tenant...*

As noted above, the tenants' current application includes requests for repairs, for a reduction in their monthly rent as a result of the landlord's failure to maintain the rental unit, and for a monetary award in this regard.

Although the tenants did not submit a detailed Monetary Order Worksheet with their application, they identified the following breakdown of the \$13,100.00 they were seeking in their application for a monetary award:

Item	Amount
I want compensation for my monetary loss or other money owed	\$5,000.00
I want to be paid back for the cost of emergency repairs that I made during the tenancy	5,000.00
I want to reduce rent for repairs, services or facilities agreed upon but not provided	3,000.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	\$13,100.00

In each of the three above-noted portions of their application, they described their request for monetary awards as follows:

Moneys owed for repairs performed. Witnessed. Moneys owed for time loss from work to effectuate repairs. Moneys owed for time loss from work for filing and arbitrating case. Compensation for abandonment by landlords, owner and property managers in emergency and urgent situations. Compensation for rude, ill-willed, aggressive and uncooperative treatment of tenants in need. Compensation for rent for malfunction and failure of appliances and features, lack of repair by owner. And More.

The tenants entered into written evidence a copy of the Landlord's 1 Month Notice, seeking an end to this tenancy by August 31, 2020, for the following reasons:

Tenant has allowed an unreasonable number of occupants in the unit/site

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

Although the tenants maintained that the 1 Month Notice was not sent to them in accordance with the provisions of the Act, I noted that emailed notices were permitted at the time of the landlord's issuance of the 1 Month Notice as a result of a Director's Order issued during the global COVID-19 pandemic.

The landlord's 2 Month Notice, entered into written evidence by the parties, identified the following reasons for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

In their application and at the hearing, the tenant maintained that the 2 Month Notice was not issued in good faith. They said that the timing of the 2 Month Notice was such that it was issued the day after the 1 Month Notice was received. The tenant said that this occurred shortly after the tenant spoke with the landlord's representatives, advising them of the tenants' intention to apply for cancellation of the 1 Month Notice and expressed their belief that the 1 Month Notice would be cancelled because the landlords had no valid grounds for ending this tenancy for cause for the reasons stated. The tenant also gave undisputed sworn testimony that the landlord owns approximately 18 residential properties in the Lower Mainland, has been living in or around Toronto for over seven years, and no one has ever seen the landlord at the property.

As part of their claim that the 2 Month Notice was not issued in good faith, the tenant also said that the landlords did not fully complete the 2 Month Notice, as they had omitted identifying which landlord or close family member of the landlord would be occupying the rental unit. I noted that the landlord's failure to identify exactly who was planning to occupy the rental unit did not negate the validity of the 2 Month Notice, as the more general reason cited in the Notice conforms with the wording of the Act.

The tenant also testified that the landlord's agents have not fully complied with any of the first three terms in the April 30, 2020 settlement agreement. The tenant maintained that rather than expend the funds to properly repair and maintain the rental home, the landlords were attempting to end the tenancy and thus avoid the financial outlay for repairs. They said that the repair person sent by the landlord's agents only repaired one small strip of the stairs, and that the stairs remain in danger of collapsing altogether. When questioned, WL did not deny the tenant's claim that the main access stair risers and stringers have not been replaced. The tenant gave undisputed sworn testimony that the safety tread on the gangway to the deck has not been replaced. The tenants said that a guest of the tenant in the lower rental unit was injured slipping on the unsafe gangway that remains unrepaired. Although workers have been sent to the rental property to clean the gutters, this cleaning has not been completed. WL said that a worker is planning a return visit to the rental home the day after this hearing to complete the cleaning of the gutters. The parties agreed that the tenant sent the landlord's agents photographs of the damaged eaves. WL did not deny the tenant's assertion that the damaged eaves have not been replaced, as the landlord's agents committed to undertake at the April 30, 2020 hearing of this matter. WL said that the

tenant has been difficult to deal with in allowing workers access to the rental property. As the current COVID-19 state of emergency continues, the landlord is not yet under any obligation to undertake the repairs their agents committed to undertake with respect to the fourth and fifth term of their settlement agreement.

I also note that the written evidence supplied by the tenants included a statement by Applicant CS, who no longer resides on the premises as to the state of repair and maintenance in this rental home during their residency there from the period from November 2019 until July 31, 2020. Their letter outlined a series of maintenance issues to major appliances, and even the electrical system, which the tenants maintain the landlord's agents have taken little action to repair.

Landlord Representative MY (MY) , the property manager, testified that on the same day that they spoke with the landlord about the tenant's intention to apply for cancellation of the 1 Month Notice, the landlord informed them in an email, entered into written evidence by the landlords, that the landlord intended to use the rental unit for themselves. MY said that they understood that the landlord would be moving back to British Columbia to be close to their parents.

At the hearing, the landlord confirmed that they had been living in Toronto for the past years, and now that their home there had been completed, they were ready to return to British Columbia to live near their parents. The landlord said that they intend to live in the upstairs rental suite for at least the next six months. They do not plan to sell or rent their existing home in the Toronto area while they spend the six month period in the rental suite. They provided few other details regarding their plans.

During the course of the hearing, the parties revealed that the landlords were also concerned that the tenants had not yet paid all of the monthly rent for August 2020. The parties have been engaged in discussions whereby a repayment plan for the unpaid portion of rent for August 2020 would be addressed by the tenants within the next year. WL stated that the landlord is concerned that monthly rent is already not being paid by the tenants and that continuing this tenancy any further might only contribute to further rental arrears. The tenant said that they realize that monthly rent for the month of September will need to be paid in full, or the landlords will be able to end the tenancy on the basis of unpaid rent.

Analysis

Pursuant to section 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice. As the tenants submitted their application to cancel the 2 Month Notice on July 16, 2020, they were within the time limit for doing so, and the landlord must demonstrate that they meet the requirements of the following provisions of section 49(3) of the *Act* to end this tenancy:

(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.

RTB Policy Guideline 2A has been issued to assist arbitrators in making determinations regarding 2 Month Notices issued to tenants when, as was the case in this instance, the "good faith" of the landlord has been questioned by the tenants. This Policy Guideline reads in part as follows:

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. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith...

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive...

In considering this matter, I should first note that I am tasked with considering the situation as it existed at the time the 2 Month Notice was issued, in this case, July 9, 2020.

The landlord's principal evidence was their sworn testimony that they do indeed intend to occupy the rental suite for a period of at least six months. They offered no other evidence, other than their email instruction of July 8, 2020 to their representatives, that they were in good faith planning to occupy the rental unit.

By contrast, I find that the tenant has provided considerable evidence and testimony to support their assertion that the landlord was not acting in good faith in issuing the 2 Month Notice. I find the timing of the issuance of the 2 Month Notice somewhat questionable, given that it was issued the day after the landlord issued the 1 Month Notice. The landlord and the landlord's representatives confirmed that the landlord's decision to occupy the rental unit themselves came after the landlord's representatives advised the landlord that the tenant had called them to inform them that they would be applying to cancel the 1 Month Notice. The landlord's representatives did not deny that the tenant had told them in that conversation that the reasons stated in the 1 Month Notice were inadequate and would in all likelihood be rejected by an Arbitrator at a dispute resolution hearing.

While the above information on its own may be sufficient to call into question whether the 2 Month Notice was issued in good faith, I also find that there is a demonstrated record of repair requests being either ignored or only partially completed. In this case, there is even a record of the landlord's representatives entering into a settlement agreement with the tenant at the April 30, 2020 hearing and making commitments that have not been fulfilled 3 ½ months later. As was noted in RTB Policy Guideline 2A, evidence of the ulterior motive of attempting to avoid expenditures to properly maintain and repair a rental property may be taken into account in considering whether a landlord has issued a 2 Month Notice in good faith. In addition to the tenants' written evidence regarding repairs that have yet to be undertaken or completed, which are in addition to the commitments made but not yet completed following the April 30, 2020 hearing, there are also significant monetary portions in both the tenants' current application as well their previous application for a monetary award and rent reduction that was also dismissed with leave to reapply. Under these circumstances, I find that the tenants

have provided additional reasons to call into question the extent to which the 2 Month Notice was issued in good faith.

The concerns raised by the landlord's representatives about the tenants' ability to pay rent during the current state of emergency provide further reason to question whether the landlords have issued the 2 Month Notice in good faith.

I observe that the tenant's evidence with respect to the amount of time the landlord had resided in another province and the extent of the landlord's real estate holdings in British Columbia was not supported by hard evidence. However, I also note that the landlord and their representatives provided very little details to explain why the landlord had decided after living in another province for an extended period of time that they could not have relocated to another property they own in this province as opposed to this currently occupied rental suite.

After weighing the evidence before me, I find on a balance of probabilities that the landlord has not established to the extent required that they intend in good faith to occupy the rental property. For this reason, I allow the tenants' application to cancel the 2 Month Notice, which is no longer in force or effect.

As this tenancy is continuing and the tenant has supplied sufficient evidence to call into question the extent to which the landlords have fulfilled the terms of their April 30, 2020 settlement agreement, I issue the following orders:

1. The landlords are required to complete the work they committed to undertake in Clauses 1, 2 and 3 of their April 30, 2020 settlement agreement, by August 31, 2020.
2. In the event that the work the landlords committed to undertake in Clauses 1, 2 and 3 of their April 30, 2020 settlement agreement is not completed by August 31, 2020, the tenants will be allowed to reduce their monthly rent by \$300.00 as of September 1, 2020.
3. In the event that the work the landlords committed to undertake in Clauses 1, 2 and 3 of their April 30, 2020 settlement agreement is not completed by September 30, 2020, the tenants will be allowed to reduce their monthly rent by a further \$100.00, to a total of \$400.00, as of October 1, 2020.
4. In a similar fashion as outlined above in Clause 3, monthly rent for this tenancy will be reduced a further \$100.00 for each successive month until all work required in Clauses 1, 2 and 3 of their April 30, 2020 settlement agreement has been completed. This process of reducing rent by \$100.00 per month in the

event that this work has not been completed will continue until such time as there is no monthly rent to be paid for this tenancy.

5. Monthly rent will revert to the regularly scheduled amount on the month following satisfactory completion of the work required in Clauses 1, 2 and 3 of the April 30, 2020 settlement agreement between the parties.

Based on the undisputed written evidence submitted, I am also concerned as to the electrical safety of the rental unit and issues regarding the functioning of various appliances within the rental suite. For this reason, I issue the following orders:

6. I order the landlord to have both a licensed electrician **and** a certified appliance repair specialist inspect the rental suite to make recommendations on the adequacy of the electrical system and appliances respectively.
7. I order that copies of reports prepared by both of these individuals be provided in full to the tenants within 14 days of their provision to the landlord's representatives.
8. In the event that repairs or replacement of portions of the electrical system or appliances are recommended, I order the landlords to undertake such repairs or replacements within 30 days of receiving these recommendations from the licensed electrician and certified appliance repair specialist.

In the event that any of these orders are not followed, the tenants are at liberty to apply for further orders with respect to repairs or rent reductions.

As the tenants have been successful in their application for dispute resolution, I allow their application to recover their \$100.00 filing fee from the landlords. To implement this monetary award, I order the tenants to withhold \$100.00 from either the monthly rent they currently owe for August 2020 or for a future monthly rent payment of their choice.

I dismiss the other portions of the tenants' application not addressed in this decision, including, but by no means limited to, their applications for various monetary awards, reductions in rent or other repair orders, with leave to reapply.

Conclusion

I allow the tenants' applications to cancel the 1 Month Notice of July 8, 2020, and 2 Month Notice of July 9, 2020. Both of these notices are of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue the following orders to the landlords:

1. The landlords are required to complete the work they committed to undertake in Clauses 1, 2 and 3 of their April 30, 2020 settlement agreement, by August 31, 2020.
2. In the event that the work the landlords committed to undertake in Clauses 1, 2 and 3 of their April 30, 2020 settlement agreement is not completed by August 31, 2020, the tenants will be allowed to reduce their monthly rent by \$300.00 as of September 1, 2020.
3. In the event that the work the landlords committed to undertake in Clauses 1, 2 and 3 of their April 30, 2020 settlement agreement is not completed by September 30, 2020, the tenants will be allowed to reduce their monthly rent by a further \$100.00, to a total of \$400.00, as of October 1, 2020.
4. In a similar fashion as outlined above in Clause 3, monthly rent for this tenancy will be reduced a further \$100.00 for each successive month until all work required in Clauses 1, 2 and 3 of their April 30, 2020 settlement agreement has been completed. This process of reducing rent by \$100.00 per month in the event that this work has not been completed will continue until such time as there is no monthly rent to be paid for this tenancy.
5. Monthly rent will revert to the regularly scheduled amount on the month following satisfactory completion of the work required in Clauses 1, 2 and 3 of the April 30, 2020 settlement agreement between the parties.
6. I order the landlord to have both a licensed electrician **and** a certified appliance repair specialist inspect the rental suite to make recommendations on the adequacy of the electrical system and appliances respectively.
7. I order that copies of reports prepared by both of these individuals be provided in full to the tenants within 14 days of their provision to the landlord's representatives.
8. In the event that repairs or replacement of portions of the electrical system or appliances are recommended, I order the landlords to undertake such repairs or replacements within 30 days of receiving these recommendations from the licensed electrician and certified appliance repair specialist.

I further order the tenants to recover their \$100.00 filing fee for their application by ordering them to reduce either the amount owing for their August 2020 rent or for an upcoming monthly rental payment by \$100.00.

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: August 21, 2020

Residential Tenancy Branch