# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNL, LRE, OLC, LAT, FFT

Introduction

The tenant applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 49 of the *Residential Tenancy Act* ("Act"). In addition, they applied for relief pursuant to sections 31, 62, 70, and 72 of the Act.

Both parties attended the hearing on October 8, 2021, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Service of Evidence

The tenant testified that he served copies of his evidence on the landlords. The landlords acknowledged receipt of the tenant's evidence. The landlords testified that they served copies of their documentary evidence on the tenant on October 4 ("four days ago"). They served the evidence by attaching it to the tenant's door. Both landlords testified under oath as to the date and method of service.

Despite this, the tenant testified that he was "in the city Monday and Tuesday" and home on Wednesday, and that he never saw anything posted to the door. He confirmed that there was no one else residing at the rental unit.

Based on the evidence before me, I am satisfied on a balance of probabilities, that the landlords served their evidence on the tenant.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to any relief under sections 31, 62, 70, and 72 of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began January 1, 2020. Monthly rent is $1,250.00. The tenant paid a security deposit of $625.00 and a pet damage deposit of $625.00. There is a copy of a written residential tenancy agreement in evidence.

On May 28, 2021, the landlords served the Notice on the tenant by attaching the Notice to the door. Though neither party provided a clear and legible copy of the Notice into evidence, there was no dispute as to the content of the Notice. Namely, that the Notice was issued because the landlords intend to have their daughter occupy the rental unit.

**Landlords' Testimony Regarding the Notice**

The landlord (D.M.) testified that when they first rented out the rental unit to the tenant, he was unsure of how long the tenancy would last. He let the tenant know that eventually his daughter would move in after university. The daughter is 21 years old and wants very much to move into the rental unit. The rental unit is a self-contained carriage house separate from the main house but connected by a covered breezeway.

When the Notice was served on May 28, 2021, "all hell broke loose," the landlord testified. The tenant immediately began screaming and yelling at the landlords. They had to call the police at least five times, and the landlords remarked that they feel like "hostages in our home." The tenant's behavior since has caused a lot of anxiety.

Despite the landlords giving the tenant ample notice about ending the tenancy, the tenant apparently said that he is "never going to leave." And as to the many allegations made against him by the tenant, the landlord commented that "it's pretty disgusting" and that the submission of pics, along with accusations, are an attempt to "assassinate my character." All of this, the landlord said, "just because of a two-month notice."

**Tenant's Testimony Regarding the Notice**

The tenant's argument is that the landlord issued the Notice in response to the landlord's alleged attempts to engage in sexual exploitation. The tenant vehemently

disputes that the landlords issued the Notice because they intend in good faith to have their daughter reside in and occupy the rental unit.

The landlord (D.M.) apparently plied the tenant with alcohol. Indeed, the tenant provided a photograph of what appears to be a bottle of vodka sitting atop a copy of the tenancy agreement.

However, the tenant explained that the narrative that led up to the issuing of the Notice in fact began with a dispute over plants that were kept outside. Apparently, the landlord was unhappy with where the tenant was keeping his plants.

The tenant testified that he was subject to “constant harassment” from the landlord. Part of that harassment apparently involved fellatio. A photograph of a gentleman performing fellatio on another gentleman was submitted into evidence. Also submitted was a screenshot referencing the GPS coordinates of said fellatio.

The tenant spoke of the landlord having “tried to rape Jacob.” And he testified that the landlord “got rape-y with [Jacob].” However, the landlord apparently threatened to give the tenant the boot if the tenant said anything to anyone about these activities.

**Landlords’ Rebuttal**

The landlord testified that “anybody can fabricate” the evidence submitted and that “anybody could be there” at the scene of the sexual act. The allegations are disgusting, the landlord reiterated, and that it is the tenant who has been harassing the landlords, not the other way around. In summary, the tenant’s testimony and evidence are nothing more than “fabricated lies and crap.”

**Tenant’s Rebuttal**

The tenant testified that it was Jacob who visited him. He was “only 25 years old when [the landlord] tried to engage in sexual acts.” Moreover, the tenant argued that the landlord is “trying to cover this up,” trying to hide his sexual predation, and plying the tenant with booze.

Analysis

Section 44(1)(a)(v) of the Act refers to a landlord's notice to end tenancy for use of property, which is covered in more detail in section 49(3) of the Act. This is the section under which the Notice was issued, and it reads as follows:

> 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.

A "close family member" is defined in section 49(1) of the Act to mean, in relation to an individual landlord, (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

The standard of proof in an administrative hearing is that of a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. When a tenant applies to dispute a notice to end a tenancy, the onus is on the landlord to prove, on a balance of probabilities, the reason for issuing a notice to end tenancy.

Prima facie, I find that the landlords have proven the ground on which the Notice was issued. Namely, that they intend for their daughter to occupy the rental unit.

However, where a tenant disputes a notice to end a tenancy on the basis that the landlord issued the notice in bad faith – such as is the case before me – then the landlord is obliged to refute that claim and prove that the notice was 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. And, 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, however, the tenant must substantiate their claim with evidence. In this case, the tenant's primary argument was that the landlords (the landlord D.M. specifically) issued the Notice as some sort of retaliation for the tenant not giving in to, or tolerating, the landlord's alleged sexual exploitation. The tenant's premises for this argument are primarily based on (1) the landlord's plying the tenant with booze, (2) the sexual advances allegedly made by the landlord against Jacob, and (3) the fellatio.

In respect of the first claim, there is no persuasive evidence of the landlord ever plying the tenant with booze and then somehow sexually exploiting him. The one photograph submitted is nothing more than a bottle of vodka perched atop a signed tenancy agreement. To be frank, there is something rather peculiar about why such a photograph would even be taken, and I find that the tenant's claim about the landlord plying him with alcohol to be nothing more than a fabrication.

In respect of the second claim, this is based entirely on the tenant's testimony and an uncorroborated text message between the tenant and a third party. The text message conversation, dated May 8, 2021, reads as follows (excerpt, and reproduced as written):

| | |
|---|---|
| Tenant: | Did he fuck you? Or did he just try to? I'm sorry for making fun of you. This is actually serious and I don't feel safe there anymore… |
| Jacob: | Nothing happened haha<br>Tried<br>He did |
| Tenant: | He tried to fuck you?<br>[D.M.] has over stepped with a few of my guests and I honestly don't know what to do |
| Jacob: | Yeh hes pretty rapey |

It is worth noting that the subject of the alleged sexual advance did not attend the hearing to testify, nor was the content of the text conversation sworn under oath. In any event, little weight is placed on this one piece of text conversation, and it does not persuade me to find that the landlords issued the Notice for reasons related to an alleged, but unproven, sexual advance on one of the tenant's guests or friends.

Last, in respect of the matter involving fellatio, a single instance of one person performing oral sex on another person – even when such an act is supported by oral or photographic evidence – is insufficient to prove that the one person was somehow sexually exploiting another. There must be more than an isolated incident substantiated by uncorroborated evidence. In this case, the recipient of the fellatio was not identified in the hearing by a third party or by the landlord. Indeed, it could be any male individual receiving the fellatio. What is more, the tenant's GPS information, and the photograph itself, are dated December 4, 2019, almost a month before the tenancy began.

Last, in relation to the tenant's argument that the landlord threatened to evict him if news of the landlord's alleged escapades ever got out, there is in evidence a text conversation on November 24, 2020, in which the tenant texts, "I also don't want you to look bad for [landlord's wife]." The landlord responds, "I thought you were saying you spoke some gossip about me to your friends?" The tenant answers, "No no [. . .] Never [. . .]" to which the landlord then texts "That's good, cause I'd give you the boot. Lol"

However, this specific conversation occurred more than six months before the Notice was issued, and without any additional evidence before me I find that the tenant's argument that the landlord issued the Notice as a way to keep the tenant quiet is not particularly persuasive. The link between the events is simply too remote and tenuous.

The second narrative submitted by the tenant is that the landlord may have (also) issued the Notice because of earlier disagreements about the placement of the plants. There are copies of some undated text conversations between the tenant and the landlord about the plants. The landlord tells the tenant that there are too many plants blocking the pathway. The tenant tells the landlord to "Walk the other way."

In respect of this argument, I am not persuaded by the oral and documentary evidence before me that the dispute regarding the plants in any way undermines or calls into the question the good faith of the landlords in issuing the Notice.

In short, the tenant's argument that the Notice was not issued in good faith because the landlord was somehow trying to cover things up, or trying to retaliate, is without merit. This is not to say that there was not something "going on" between the landlord and the tenant or his guests. But if there was, it is, I find, unrelated to the issuing of the Notice by the landlords.

Taking into consideration all of the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has failed to discharge the onus of establishing that the landlords issued the Notice in bad faith. Quite simply, I find that the tenant has concocted a desperate argument, supported by uncorroborated, dated, and questionable documentary and photographic evidence, to dismantle the landlords' argument that they issued the Notice in good faith.

In conclusion, the tenant's application for an order cancelling the Notice is dismissed without leave to reapply.

Having dismissed this portion of the tenant's application the remaining claims for relief under section 70 (restricting or suspending the landlords' right to enter the rental unit), sections 31 and 70 (lock change authorization), and section 62 (order for landlord compliance) of the Act are dismissed without leave to reapply. Given that the tenancy is ended, these claims are now moot. In addition, the tenant's application for recovery of the cost of the filing fee is dismissed.

Having dismissed the tenant's application to cancel to the Notice, the Notice itself must be found to be in compliance with section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Having reviewed the Notice (based on both the parties' testimony as to the Notice's content and on the photograph of page one of the Notice) I conclude that the Notice served by the landlords on May 28, 2021 complies with the requirements as set out in section 52 of the Act.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed, or the landlord's notice is upheld, then the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act.

As such, the landlords are granted an order of possession of the rental unit. A copy of this order of possession is issued in conjunction with this decision, to the landlords. The landlords must serve a copy of the order of possession on the tenant by any method permitted by section 88 of the Act.

Conclusion

The tenant's application is dismissed in its entirety, without leave to reapply.

The landlords are granted an order of possession. This order of possession must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 12, 2021

Residential Tenancy Branch