



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on June 24, 2021 seeking an order to cancel the Two-Month Notice to End Tenancy for the landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek the landlord’s compliance with the legislation and/or the tenancy agreement. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 22, 2021.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that each party provided to the other in advance. On the basis that both parties received full disclosure from the other, I proceeded with the hearing.

Issues to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the Two-Month Notice?

Should the tenant be unsuccessful in seeking to cancel the Two-Month Notice, is the landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the landlord obligated to comply with the *Act*, the regulations and/or the tenancy agreement, pursuant to s. 62 of the *Act*?

Background and Evidence

Both parties submitted a copy of the tenancy agreement and there was no dispute as to the terms therein. The parties signed the agreement on July 21, 2020 for the tenancy that began on August 1, 2020. The rent was \$1,200 on a month-to-month basis.

At its outset, the design of the agreement was for a short-term tenancy. The tenant normally resides at a separate property; however, due to renovations at that property that started in spring 2020, they were seeking a temporary living arrangement in another rental unit. The agreement was premised on that separate business paying the tenant's rent. In a letter dated May 8, 2020, this is stated to be "for an amount up to \$1250 per month at least until June 2021, or when renovations are completed."

As of the date of the hearing, the tenant had not heard from their separate landlord for seven weeks prior. The tenant obtained a lease and keys for their previous rental unit, now renovated; however, on the visit they made they had a strong reaction to the materials used for the renovation.

Previously, the landlord served a Two-Month Notice to End Tenancy on November 25, 2020. This was for the downstairs rental unit to be occupied by the landlord or the landlord's close family member. The tenant contested that Two-Month Notice, and the matter went to a previous hearing on February 23, 2021. The landlord's basic position as justification for that notice was their own family's need for the rental unit. In particular, the landlord and their children were subject to major changes in their lives prompting the need for more space. This was a work-from-home arrangement for the landlord, and a majority of home study for their two children. There were also the children's extra-curricular activities that required more space.

Prior to that November 25, 2020 Two-Month Notice, the disagreements between the landlord and tenant began. The tenant has a condition that make a scent-free environment fundamentally important; lack of this causes severe reactions. Additionally, they suffer from PTSD that compounds their anxiety. These needs and restrictions were the reason for the tenant making requests and grievances to the landlord for changes to shared property areas, use of detergents and other liquid agents and scents.

In that prior hearing, the tenant raised their objections to the landlord's need for the rental unit. With the landlord bearing the burden of proof to show that need, the tenant made their case that the landlord serving the Two-Month Notice was more likely than

not served with the underlying motive – hence served in bad faith – to evict the tenant because of the ongoing tension.

The Arbitrator made that finding, and the Two-Month Notice issued on November 25, 2020 was cancelled. This was because the “timing of the [Two-Month] Notice, given that it was issued after escalating conflict, and recent police involvement, [was] suspicious.”

The landlord issued a subsequent Two-Month Notice on June 9, 2021. The tenant filed their Application to challenge that on June 24, 2021. By July 22, 2021, in an email to the Residential Tenancy Branch, the landlord acknowledged they omitted the rental unit address on that document. Because of this, the landlord issued another Two-Month Notice on July 27, 2021, for the end-of-tenancy date September 30, 2021. Similar to its previous iterations, the landlord indicated that their child would occupy the rental unit.

On August 11, 2021, the tenant amended their Application to dispute this July 27 Two-Month Notice. Given the landlord’s acknowledgement of the flawed prior Two-Month Notice, this July 27 Two-Month Notice is the proper subject of this hearing.

Since the February 23, 2021 hearing, the tension between the parties has continued, and in some respects even increased. The record shows the tenant raised the following objections and grievances, both directly and indirectly, to the landlord:

- the landlord’s removal of the garden hose, prompting the tenant’s call to the police, who attended on July 9 – self-disclosed by the tenant in a note to their advocate, though not in the police report submitted in the evidence
- the landlord’s removal of the tenant’s doorbell camera, subject of the same call to police – self-disclosed by the tenant to their advocate, as above
- the landlord pouring perfume (which greatly exacerbated symptoms) under the rental unit door on June 9, prompting the tenant’s call to police who attended – police report submitted
- the landlord’s removal of the tenant’s door seal, in place because of the perfume issue, prompting the police attendance on June 27 – self-disclosed by the tenant to their advocate, but no police report submitted
- the landlord washing foam from a container in the immediate vicinity of the tenant’s rental unit window, high risk for the tenant’s condition – illustrated with video

- a scream from the landlord's rental unit upstairs, overheard threat of the landlord to strike their children, prompting the tenant's call to police, who attended on June 11 – police report in file
- the landlord and their family occupying the front yard space, leading to the tenant's concern with their use of personal scents – prompted call to police on July 9 – police report, redacted, submitted by the tenant
- removal of lights from the path used by the tenant to enter/exit their rental unit - photos
- a spill in the garage space, leading to a fall - photo
- a dead squirrel found in a container within the garage space - photo
- leaves on the driveway not cleaned – photos
- ants in the rental unit – with video and photos
- items thrown from the upstairs balcony – an image shows strips of cardboard or boxes strewn in the backyard space – photo
- query/complaint on parking space for the rental unit – email to landlord, July 9.

Taking up the issue of their need for the rental unit, the landlord presented their written submission in the hearing. They supplemented their submissions with 8 exhibits of past decisions dealing with similar situations or the application of the same considerations before a decision maker. There were four key areas to the landlord's submission, delivered via their relative in the hearing:

- i. *temporary nature of the tenancy*: The intention of the parties at the start was to always have a short-term tenancy. As of the date of the hearing, the tenant had overstayed by 4 months. An important message from the tenant to the landlord dated May 4 shows the tenant advising the landlord of an extension to their need to maintain the tenancy. At that time, it was "hopefully one more month", with the tenant stating: "I just need more time to move" where "negotiations stalled with [the tenant's separate landlord]".
- ii. *good faith intentions of the landlord*: The timing of the landlord's service of the November 2020 Two-Month Notice was within 6 days of a prior conflict. The landlord here reiterates they have no intention to re-rent the rental unit. They presented this is a verified need for the landlord's children to study, work, and carry on with extracurricular activities in the home.

The landlord here points to letters from other family members attesting to their need to stay at the landlord's home when visiting. The landlord's son provided that they are set to start university study and look forward to using the suite. The

landlord's parents each provide that the use of the rental unit would be for family use, and they both reiterated their concern for all family members' well-being, especially that of the landlord.

The landlord's mother provided that the original purpose for the landlord "fixing up the unit" was to prepare for the child's own use of the rental unit. The tenancy here was started due to its short-term nature.

Another family member attested to the landlord's challenges with being a single parent and the landlord's life situation. This need for ongoing support underlines the need for their parents to visit frequently and have a secure place to stay with the landlord in their own home.

- iii. conflict: The landlord acknowledged there was ongoing conflict between the parties. Any way in which the landlord chose to address the communication and other challenges with this tenancy are a completely different objective from what the landlord presents here as their family's need for use of the rental unit space.

They presented a series of cases that show similar fact patterns leading to decisions that support a landlord in their need to end the tenancy for landlord's use. One was where the tenant raised questionable motives; however, the decision maker in that example found insufficient evidence of that, in light of an ongoing conflict situation. A different case dealt with a scenario where there was an underlying health concern of the tenant.

- iv. tenant's health issues: The landlord pointed to other cases/scenarios they provided to show there is "not a freestanding obligation [for the landlord] to accommodate a health concern." The prior Arbitrator cited this as an added stressor for the landlord.

The landlord also pointed to three police reports provided by the tenant here; these are all initiated by the tenant. As they involve the tenant's chemical sensitivity, this bolsters the idea that the calls are for the tenant's own benefit. The landlord also pointed to the tenant's May 4 email to the landlord because it appears that the tenant is placing the burden of their medical matters onto the landlord to an increasing degree as time passes.

The tenant provided 33 separate exhibits, many of which appeared in the landlord's material. Additionally, the tenant provided photos and videos that show their

interactions with the landlord, or videos narrated by the tenant. Notable among the tenant's documents are the following:

- The landlord's letter to the tenant dated October 5, 2020. This lists the landlord's reasons for wanting to end the tenancy at that time: smoke from the tenant's cannabis use; blocked access to the mechanical room in the rental unit; and disabled smoke detectors. Also: "You have also repeatedly either verbally or via text tried to incite me by incessant complaints & unnecessary cruelty insinuating that I, my family or my suite have caused you mental & physical distress." The landlord asks the tenant "if you could please vacate the rental suite as soon as possible."
- Two letters from a close contact of the tenant, who act as support. In one, they describe their initial identification of scented products that trigger the tenant; in the other they describe the incident involving perfume placed under the door of the rental unit. Incidents initiated by the landlord cause the tenant to "lose time and progress in packing and moving and instead triggers previous traumas and adds new ones." They describe the landlord's actions as a "harassment campaign."
- An unsent draft email to the landlord from mid-May. There are various concerns of the tenant, in response to the landlord's two messages regarding smell from the tenant's cannabis use. There are concerns about parking, an increasing "noise war", placement of items in the garage space, continued scent issues, stress, and their knee injury from slipping in the garage.
- Photos of the scented product under the door on June 10, 2021.
- A July 9 email to the landlord, outlining the tenant's position on parking, vehicle entry/exit into the property area, and their need for space for packing and organizing. The tenant states: "I shall be adding these two notes . . .to strengthen my harassment claim against you." They forwarded this to the local human rights coalition, and the tenant's advocate "as evidence of this week's harassment and [the landlord] starting conflicts over nothing."

In the hearing, the tenant spoke to their own submissions, to show the landlord was primarily motivated by the conflict with the tenant to issue the Two-Month Notice.

Both the tenant and their advocate noted the landlord did not state anything about the family need in the prior Arbitration. Additionally, many statements mentioned by the landlord here were not mentioned at all in the prior hearing, particularly the family member's plan to attend university.

They also noted their recent observations of the one landlord's child not being there, only appearing to come home on weekends. This means a reduction in noise when that child is not there.

Additionally, the tenant reiterated the point of the early May 8, 2020 letter, where it noted the timeline of "at least June 2021, or when renovations are completed." This shows the timeline was never firmly established.

The tenant reiterated their statements about constant harassment from the landlord, with their own medical condition being the conduit for abuse from the landlord. As stated: "I am sick now because of the landlord's actions."

Their advocate provided that previous Residential Tenancy Branch arbitration decisions, as relied upon by the landlord here, are non-binding; however, the only relevant decision here is that of the prior Arbitrator from February 24, 2021. They mention that the court ruling in *Gichuru*¹ is binding, to illustrate the concept of one's honest intention. In sum, bad faith is motivating this move by the landlord and the suspicious actions of the landlord are intended to get the tenant to move.

In closing, the tenant asked to stay until February 2022 should their Application be dismissed. They also asked if, should they be successful, I make the order that the landlord could not end the tenancy for any other reason.

Analysis

The Act s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice "if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

The Act s. 55 provides that I must grant to the landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the tenant's Application or uphold the landlord's notice.

Both parties are familiar with the *Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord*, which gives a statement of the policy intent of the

¹ *Gichuru v. Palmar Properties Ltd.*, 2011 BCSC 827, cited in the *Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupant by landlord, Purchaser or Close Family Member*

legislation. In the earlier February 2021 decision, the Arbitrator applied the principles therein to the situation as it then existed between the parties. The key points, as set forth in the guideline, is:

When the issue of a dishonest motive or purpose for end the tenancy is raised, the onus is on the landlord to establish they are acting in good faith

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 intent 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 [Act] or the tenancy agreement.

...

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 this matter, both parties clearly articulated and are aware that the landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the landlord has met the burden to show they issued the Two-Month Notice for a valid reason. This finding has two components that form the basis for my conclusion.

First, I find as fact, to support my conclusion that the landlord had a good faith intention to use the rental unit for the purpose stated in the Two-Month Notice:

- The landlord did not waver from their intention to use the unit for family purposes – this is the use of the rental unit by the child of the landlord, as indicated on the Two-Month Notice. The landlord did not issue other notices to end tenancy for other reasons, such as cause, despite the mutually acknowledged tension and conflict. An example of this is the landlord communicating to the tenant their request that the tenant use cannabis outside. This request was not followed by a notice to end the tenancy even though the landlord apparently took the matter quite seriously.

As proof of this unwavering intention, I look to an email provided by the landlord in their evidence. This is from July 22 where they announced to the Residential Tenancy Branch the flaw in the June 9 Two-Month Notice. The landlord's statement is: "I am not lying about wanting my house for my own use so I think I will post many two month notices over & over again until my tenant leaves if I am allowed to do so." This is prior to issuing the Two-Month Notice being examined in this present hearing. I find this statement shows the landlord not examining other options for ending the tenancy when their intention is firm. I find this is not

the landlord seeking approval from the branch in order to issue another notice; rather, I find this a simple statement of the landlord's intention for their child to occupy the rental unit, within the boundaries of the law. It is not a search for any avenue available to end the tenancy; rather, it is a statement of the firm conviction of the landlord of their need of that space for family use.

- The landlord is aware of the consequences imposed by the *Act* where a landlord does not accomplish the stated purpose within a reasonable time or use the unit for that purpose for at least six months and stated so explicitly in the hearing. That is s. 51(2) of the *Act*, where a landlord must pay compensation equal to 12 times the amount of rent, where they do not accomplish that stated intent. This does not carry my finding on this point exclusively; however, I find it a relevant acknowledgement by the landlord that they are aware of the seriousness of ending a tenancy on a false pretext.

As proof of their awareness, I find the landlord reviewed other arbitrator decisions and provided them as exhibits; more than one of these decisions refers to s. 51(2) of the *Act*, more as a strong caution to a landlord of the ramifications if the intent is not met.

- I find the landlord entered the agreement on the premise that the tenancy would be shorter in duration. The key document on this point is the letter dated May 8, 2020, which sets this out. I acknowledge the tenant's point that the letter states: "*at least until* June 2021, or when renovations are completed." Despite this finer detail, I accept the landlord's testimony that this was the most attractive arrangement for entering the agreement, and this bolsters their intent to have the unit back for use by their family, in a shorter rather than a longer term.

I find this also explains why the tenancy agreement is on a month-to-month basis, rather than a fixed term. On a balance of probabilities, I find it more likely than not this arrangement gave both parties an added avenue of flexibility in ending the tenancy, being periodic in nature. At the start of the agreement, there was no set ending date nor defined period; I find it plausible this is why the landlord did not specify an end date for the agreement, while at the same time entering the agreement with some assurance that it was to be a temporary arrangement with the tenant while their own separate accommodation was being renovated.

Further to this, the tenant messaged to the landlord on May 4, 2021 to advise the tenancy *would not end* by June 1, 2021. I find this is significant and reveals something of the original discussion had by the parties at the outset. Nowhere else in the evidence is this precise date mentioned; however, here it is re-stated by the tenant to the landlord when advising of the then-current status. This email also has the tenant stating “It is hopefully only one more month I will need the apartment” – this is further proof of the periodic nature of the tenancy, that being most suitable to the circumstances where the tenant’s renovations could finish at any time.

Also significant in the May 4 email is the tenant’s statement: “I’m sorry, I know you want the space back soonest.” I find this is tacit acknowledgement of the landlord’s need for the space only, minus an ulterior motive. This followed a prior notice to end the tenancy; however, I find this also harkens back to the original discussion had by the parties, which more likely than not focused on the landlord’s ensuing need for the rental unit.

- I find it acceptable that the landlord here raised more personal issues and detail about their life as a single parent, and the relationship they have with other family members. The need for making these frank admissions was not present in the previous hearing, and I make no adverse inference because the landlord did not present these details in that hearing. In contrast to that prior hearing, I find the landlord presents this information to show their familial bonds are strong, and they rely on these bonds for ongoing support. The fact that they are a single parent is not irrelevant or filler detail. I find this information bolsters the need for the space in their own home for their own family use.
- I find as fact that circumstances changed within the landlord’s family life with the passing of one year into the next. The schooling situation has changed, and travel restrictions for other family members are no longer as strict as they were in 2020, making the landlord’s parents more able to visit more frequently. Significantly, the landlord issued the Two-Month Notice *past* the end of the original timeframe envisioned for this shorter-term tenancy. Circumstances have changed since the parties entered the tenancy agreement, and I find the landlord’s reason for ending the tenancy agreement is more explicit now than it was in late 2020. There is evidence the landlord’s child entered university which is a significant lifestyle change for that individual family member.

Secondly, to support my findings that there is insufficient evidence of an ulterior motive or tendency on the part of the landlord, I find the following as fact:

- There was other communication from the landlord to the tenant prior to their service of the Two-Month Notice in 2020 that was showing a different reason to end the tenancy at that time. This was a descriptive letter of October 5, 2020 wherein the landlord listed reasons they feel the tenancy should end. This was framed as a request from the landlord to the tenant to “please vacate the rental suite as soon as possible”. I find this more plainly sets out a questionable motive where it can be perceived the landlord is seeking to end the tenancy based on their grievances to the tenant.

The prior Arbitrator reached their conclusion by finding there was very recent tension between the parties when there was “escalating conflict, and recent police involvement.” This was one call to the police from the landlord, and one from the tenant soon thereafter. This led the Arbitrator to find that “the timing of the Notice. . . is suspicious.” This meant the landlord could not overcome the burden to show there was no ulterior motive for ending the tenancy.

By contrast, I find this type of messaging was not coming from the landlord to the tenant after the February 2021 prior hearing. There is no evidence of language from the landlord threatening to end the tenancy. This is despite repeated visits from the police as initiated by the tenant, and the tenant’s other messaging to the landlord. I find the tone and content of the messages from the tenant was terse and derisive; however, there is no record of the landlord responding with consequences or other counterpoints to what the tenant raised.

There is not even a record of messaging from the landlord directly inquiring or clarifying on a possible end to the tenancy. The message from the tenant to the landlord on May 4, 2021 was tenant-initiated, after they heard from their other property administration that the landlord had been inquiring to them. Given the difficult communication model in place, I find the landlord was not opening the door for more tense communication between the parties. I note as well there was no response on record from the landlord to this information coming from the tenant at that time.

- The ongoing palpable tension between the parties is tenant driven. I find the landlord has not contributed to or initiated communication that can be interpreted as moves toward ending the tenancy for any reason other than their need for the

rental unit. My finding here is based on a review of all records before me in this hearing and each party's testimony.

Based on their interpretation of miscellaneous actions of the landlord, the tenant has labelled this a "harassment campaign." It is unclear if the supposed intention of such actions would be for the tenant to end the tenancy on their own, as if the landlord were goading them to action. I find this less likely based on my assessment of the landlord's communication, and my finding above that the landlord is genuine and unwavering on their true intention of having the unit for themselves.

The tenant has called the police, as listed above, on specious claims. From the number of calls I find this is an established pattern. The landlord in the hearing presented this as such. I find no evidence of the landlord responding to these calls by retaliating or otherwise mentioning other reasons to end the tenancy.

The tenant presented evidence of the landlord pouring perfume under their door. They called the police to investigate, and I note in the police report the officer does not make specific mention of a scent. The photos provided by the tenant do not show the presence of any liquid. Given the other pretexts for calling the police, I find this evidence is not conclusive to show the landlord was harassing the tenant – based on the tenant's condition – in any way.

On other points I find the tenant has conflated minor issues to those of a concentrated harassment campaign. This includes their grievance to the landlord over parking and entry/exit to the property on July 9, 2021. This message from the tenant contains their statement: "I shall be adding these two notes . . .to strengthen my harassment case against you." On its face, this statement shows the tenant is registering virtually every action of the landlord, no matter how innocuous, as targeted and with the objective of ending the tenancy. I find it is not inconceivable that the tenant was doing so on every single interaction they had with the landlord. I find the similar scenario occurred when the tenant called police because of the landlord's family gathering in the yard.

On this evidence I find the landlord has shown that their actions, interpreted by the tenant as feeding conflict, were not even one factor in their decision to issue the Two-Month Notice. I find the landlord has shown it is inconceivable that the harassed the tenant in this fashion.

In sum, the tenant is calling out all actions of the landlord as contributing to, or causing, conflict. I find this is to undermine the landlord's motive in wanting to end the tenancy. All actions cannot be labelled as a dishonest motive. I find the landlord has met the burden to show these actions are not a sign of a dishonest motive on their part.

- In the hearing the tenant described their medical condition in broad terms and provided evidence that describes what they are living with in terms of sensitivity to scented products. As well, the tenant has PTSD. The tenant described this as being manipulated by the landlord as "medical information causing abuse." They also stated: "I am this sick now because of the landlord's actions."

As above, I interpret this as the tenant's assertion that the landlord is trying to end the tenancy in this backhanded manner. I find this is another facet of the tenant's suspicion of the landlord's "harassment campaign" and is not shown in the evidence. I find the landlord has shown the tenant placing the matter of their ailments onto the landlord; I find they have met the burden of showing that is not the case, and in no way was the tenant's condition even one factor in the landlord's decision to end the tenancy for their own use of the unit.

Based on these two considerations – where the landlord had a good faith intention, and no dishonest motive – I find the landlord has shown they issued the Two-Month Notice for a valid reason. As per s. 49(3) of the *Act*, I find they or their close family member intends in good faith to occupy the rental unit.

The *Act* s. 55 provides that I must grant to the landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the tenant's Application or uphold the Two-Month Notice.

For the reasons above, I uphold the Two-Month Notice issued on July 27, 2021. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the landlord is entitled to an order of possession on the effective date.

The tenancy shall end with the service of the Order of Possession. In line with this, I make no order for the landlord's compliance with the *Act* and/or the tenancy agreement. From the Application, I find the tenant indicated this issue as an alternate channel for the same points they wished to make concerning the end of the tenancy. I dismiss this portion of the tenant's claim, without leave to reapply.

In the hearing the tenant asked for my consideration of a later end-of-tenancy date should their Application not be successful. They proposed an end-of-tenancy date in February 2022. The time for that negotiation has passed, and that is not an option I find fair to the interests of the landlord where they have followed the law in ending the tenancy. This request is denied.

Conclusion

For the reasons set out above, I dismiss the tenant's Application, without leave to reapply. I grant an Order of Possession to the landlords **effective 1:00 p.m. on November 12, 2021**. The landlord must serve this Order of Possession on the tenant. Should the tenant fail to comply with this Order, the landlord may file it in the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

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

Dated: October 28, 2021

Residential Tenancy Branch