



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, LRE

Introduction

The Tenant applies to cancel a 2-Month Notice to End Tenancy dated May 31, 2021 pursuant to s. 49 of the *Residential Tenancy Act* (the “*Act*”). The Tenant also seeks compensation pursuant to s. 67 of the *Act*, an order under s. 62 that the Landlord comply with the *Act*, and an order under s. 70 restricting the Landlord’s right to enter the rental unit.

C.H. appeared on his own behalf as Tenant. E.W. appeared on his own behalf as the Landlord. D.D., who acts as a property manager for the Landlord, appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord advised D.D. served the 2-Month Notice to End Tenancy dated May 31, 2021 on the Tenant by personally serving it on the Tenant on May 31, 2021. The Tenant confirmed receipt of the notice from D.D. on May 31, 2021. I find that the Notice to End Tenancy was served in accordance with s. 88 of the *Act* on May 31, 2021.

The Tenant indicated he served the Notice of Dispute Resolution and initial evidence on the Landlord by way of registered mail sent on July 7, 2021. A second evidence package, comprising a USB key, was delivered to the Landlord by the Tenant on September 24, 2021. The Landlord acknowledged receipt of the registered mail sent

July 7, 2021 and receipt of the USB key on September 24, 2021. However, D.D. indicated that she was unable to access the data on the USB key and it was unreadable by the Landlord. I will address the issues with respect to the Tenant's evidence below, however, I find that the Notice of Dispute Resolution and initial evidence sent via registered mail was served in accordance with s. 89 of the *Act* and I deem the Landlord to have been served on July 12, 2021 pursuant to s. 90 of the *Act*.

The Landlord submitted evidence in response, serving it by way of registered mail sent to the Tenant on September 24, 2021. The Tenant acknowledged receipt of the evidence from the Landlord. I find that the Landlord's evidence was served in accordance with s. 89 of the *Act* and deem the Tenant to have been served on September 29, 2021 pursuant to s. 90 of the *Act*.

Preliminary Issue – Amending the Style of Cause

The Tenant's application named the management company for which D.D. is employed as the Landlord. At the hearing, I confirmed that M.E. is the owner of the property and that the property management company is acting as agent for M.E. as Landlord. This arrangement is confirmed by the notations on the 2-Month Notice to End Tenancy. Pursuant to Rule 4.2 of the Rules of Procedure, I hereby amend the Style of Cause to indicate M.E. as the Landlord.

Preliminary Issue – Tenant's Application

The Tenant applies for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure that we are able to address disputes in a timely and efficient manner.

Upon review of the Tenant's application, the central aspect relates to whether the Notice to End Tenancy will be upheld, in which case the tenancy will end, or cancelling, in which case the tenancy would continue. Given that it is a 2-Month Notice to End Tenancy for Landlord's use, the issue of compensation pursuant to s. 51(1) of the *Act* is interrelated.

The other aspects, being orders that the Landlord comply with the *Act* and restricting the Landlord's right to enter the rental unit, are related to relief granted when a tenancy is still active. If the notice is upheld and the tenancy ends, these aspects of the Tenant's claim are therefore moot. Accordingly, pursuant to Rule 2.3 of the Rules of Procedure, I hereby dismiss with leave to reapply the portions of the Tenant's application that relate to an order that the LL comply with the *Act* and restricting the Landlord's right to enter the rental unit. The Tenant's claim for compensation is limited to that tied to compensation under s. 51(1) of the *Act* following receipt of a Notice to End Tenancy for Landlord's use in the event the notice is upheld.

Preliminary Issue – Tenant's Evidence

As mentioned above, the Landlord was unable to access the evidence contained on the USB key delivered by the Tenant on September 24, 2021. I accept that the data was inaccessible to the Landlord and was not properly served on the Landlord.

The evidence, as described by the Tenant, related primarily to issues of sound disturbances and email exchanges which the Tenant indicate was tied to his claim that the Landlord comply with the *Act*. On the basis that those issues were dismissed with leave at the outset of the hearing, I exercise my discretion under Rule 3.6 of the Rules of Procedure and find that the audio files and email exchanges related to the Tenant's claim that the Landlord comply are not relevant to the whether the notice is upheld and compensation granted under s. 51. Accordingly, I decline to consider it.

The Tenant advised that the USB key included reproduced text messages between he, M.E. and D.D.. Though these were not properly served, I allow them into the record on the basis that M.E. and D.D. were present at the hearing and had access to the personal text messages they each had with the Tenant. The Landlord did not object to this course of action.

Issue(s) to be Decided

- 1) Whether the 2-Month Notice to End Tenancy dated May 31, 2021 should be cancelled?
- 2) What compensation, if any, should the Tenant be entitled?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties advised that the tenancy began on February 1, 2020. The Tenant submitted a signed email between he and the previous residential property owner which set out the broad parameters of the tenancy. Rent was due on the 1st of each month in the amount of \$1,650.00. The Landlord holds a security deposit of \$800.00 in trust for the Tenant. There is not pet damage deposit.

The Landlord advised that he purchased the residential property in February 2021 and took possession on May 28, 2021. The Landlord indicated that when he purchased the property, he knew that the Tenant was residing in the rental unit and had intended the tenancy to continue. M.E. advised that there had been discussions prior to purchasing the property that his mother would move-in with he and his family, however, that was uncertain when the purchase contract was accepted in February 2021.

The Landlord provides emails from April 11, 2021 with D.D. requesting rental options for his mother in the community. D.D. advises, in April 2021, that options for rentals were limited, particularly in the price range requested by M.E. The Landlord submits that it was after this point that the discussion turned toward the Landlord's mother occupying the rental unit.

The Landlord attempted to have the previous homeowner deliver a Notice to End Tenancy in late April 2021. The Landlord submits an email chain from April 29, 2021 between M.E. and his realtor in which the Landlord is advised the following:

The sellers were willing to deliver the notice, and attempted to, but when they did this they were confronted and threatened with "being on the hook for the dispute" they took it back and didn't want to pursue further. With nothing in the contract compelling them to, my understanding is they don't want to be involved, and prefer you give notice when you take possession of the property.

The Tenant confirmed that the previous owner had attempted to serve him with a notice but indicated it was in mid-May. The Tenant denies threatening them and only indicated that if he disputed the notice with the previous owners, then he would have to list them

as the respondents in his application. The Tenant indicates that after he told this to the previous owners, they withdrew serving the notice.

The Landlord then issued a 2-Month Notice to End Tenancy dated May 31, 2021 soon after obtaining possession of the residential property on May 28, 2021. The Landlord advises that his mother is moving from another community and that he needs help with childcare. He and his partner had a child in early 2020 and they are expecting a second child in the coming months.

The Tenant alleges that the Landlord is acting in bad faith citing that the portion of the residential property occupied by the Landlord has four bedrooms in which his mother could occupy. The Tenant further argued that the Landlord's mother could occupy an adjacent basement suite that attached to the main floor, which was used by the previous owner's elderly father. The Tenant advised that the suite lacked a kitchen. The Tenant further indicated that the Landlord's mother owns a residence in another community and there is no reason for her to move.

The Tenant describes a conversation he had with D.D. on May 29, 2021, which was an introduction between he and D.D.. During the conversation, the Tenant mentioned issues with soundproofing the rental unit, an issue the Tenant indicates he had previously discussed with the former owner, and what his current rent was. The Tenant describes that D.D. told him that M.E. would likely be disinclined to soundproof the house after spending a significant amount of money purchasing the house. D.D. further indicated to the Tenant her view that his current monthly rent was "cheap".

D.D. did not dispute the Tenant's telling of the conversation they had on May 29, 2021.

The Tenant submitted a monetary order worksheet dated June 10, 2021 in which he claims compensation equivalent to monthly rent for the months of March, April, May, and June 2021. The basis of the claim is that the Tenant has made various attempts to discuss the tenancy with the Landlord, but the Landlord was not cooperative in doing the same and did not provide his contact information prior to the taking possession of the house. The Tenant further submitted that the four months of compensation relate to the noise issues cited in his claim that the Landlord comply with the *Act*, which was dismissed with leave at the beginning of the hearing. The Tenant also seeks compensation for 1 month's rent and return of his security deposit in the monetary worksheet.

The Tenant confirmed paying rent to the Landlord for the months of June, July, August, September, and October 2021. The Landlord advised that they are in receipt of rent from the Tenant but have not deposited the rent cheque for October 2021 in consideration of the outcome of the Tenant's application.

Analysis

The Tenant seeks an order cancelling a 2-Month Notice to End Tenancy dated May 31, 2021. The Tenant further seeks compensation pursuant to s. 67 of the *Act*.

I find that the Notice to End Tenancy dated May 31, 2021 complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, lists the address for the rental unit, states the correct effective date, sets out that the tenancy would end because the Landlord's mother or father would occupy the rental unit, and is provided in the correct form.

In accordance with s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice where the landlord or a close family member intends, in good faith, to occupy the rental unit pursuant to s. 49(3) of the *Act*. Pursuant to s. 51(1) of the *Act*, a tenant who receives a notice under s. 49 is entitled to compensation equivalent to one month's rent payable under the tenancy agreement on or before the effective date of the notice.

Policy Guideline #2A states the following with respect to the good faith requirement set out in s. 49:

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA 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 (section 32(1)).

When deciding whether to cancel or uphold a Notice to End Tenancy, Rule 6.6 of the Rules of Procedure clearly sets out that it is the landlord's onus to prove that the notice is valid and issued in accordance with the *Act*.

I find the following timeline particularly relevant to the present application:

February 2021:	The Landlord purchases the residential property.
April 11, 2021:	The Landlord inquires about rental options for his mother in the community from D.D..
April 29, 2021:	The Landlord is informed that the previous owner declined to issue a Notice to End Tenancy on the Tenant.
May 28, 2021:	The Landlord gets possession of the residential property.
May 31, 2021:	The Notice to End Tenancy is served on the Tenant.

There is no dispute between the parties that the Landlord's mother is a "close family member" as defined by s. 49(1) of the *Act*. Though there is no direct evidence from the Landlord's mother, I find that the Landlord acted in good faith when issuing the Notice to End Tenancy of May 31, 2021. I place significant weight in timeline of events and the supporting emails, which indicate to me that the Landlord has had a clear intention to have his mother move into the rental unit since at least late April 2021 after asking the previous owner to issue a notice. This is further corroborated by the fact that the Landlord issued a Notice to End Tenancy shortly after taking possession of the residential property and becoming the landlord to the Tenant.

The Tenant alleges bad faith on the part of the Landlord on the basis that his mother has other options of renting accommodations elsewhere in the community, occupying another room in the residential property, occupying the suite in the basement, or maintaining her residence in which she owns her home. Respectfully, these considerations do not indicate a lack of good faith on the Landlord. There are any number of considerations in which an individual may have in choosing one residence over another, which include, as here, a parent wishing to assist in the care of their grandchildren. None of the Tenant's submissions or evidence would lead me to consider the Landlord is acting in bad faith or has an ulterior motive. The test is that the Landlord must demonstrate that they intend to do what they say they are going to. I am satisfied that he has done so and an order for possession will be granted.

The parties are reminded that should the Landlord fail to fulfill the purpose set out in the 2-Month Notice to End Tenancy dated May 31, 2021 within a reasonable period after the end of the tenancy, the penalty clause of s. 51(2) may trigger compensation equivalent to 12 times the monthly rent set out in the tenancy agreement.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Tenant seeks compensation for the months of March, April, May, and June from the Landlord due to the Landlord's failure to discuss the tenancy with the Tenant, failing to provide contact information, and due to issues related to disturbing the Tenant's right to quiet enjoyment. For the first three months claimed by the Tenant (March, April, and May), the Landlord was not, in fact, the landlord for the Tenant. Compensation under s. 67 arises when a party breaches an obligation owed to the other under the *Act*, the Regulations, or the tenancy agreement. Given that the Landlord was not the Tenant's landlord for the first three months, no obligation was owed and, therefore, there could be no breach.

Further, the Tenant indicated in his submissions that his monetary claim included compensation for noise disturbances he says were caused by the Landlord. The Tenant's claim that the Landlord comply with the *Act* was dismissed and, therefore, any claim for compensation related to this claim would not be addressed in this application.

Finally, the Tenant has failed to establish a positive obligation which exists under the *Act*, the Regulations, or the tenancy agreement for the Landlord to meet and discuss the tenancy or provide contact information prior to taking possession of the residential

property. No claim for compensation can arise from if there has been no breach of an obligation.

Accordingly, I dismiss without leave the Tenant's claim for compensation for the months of March, April, May, and June. I further dismiss the Tenant's claim for their security deposit as the tenancy is still active and the process for dealing with the security deposit is dealt with by s. 38 of the *Act*.

This leaves the final issue being compensation under s. 51(1) of the *Act*. The Landlord was to compensate the Tenant \$1,650.00 on or before the effective date in the Notice to End Tenancy, which is July 31, 2021. The Landlord has not done so, however, they have not deposited the Tenant's rent for October 2021. In essence, the Landlord has elected to compensate the Tenant with a free month's rent in October. I accept the Landlord's course of action and direct that he does not deposit the Tenant's rent for the month of October. Though the Tenant will be vacating the rental unit before the end of October, s. 26 of the *Act* makes clear, rent is due in full as set out in the tenancy agreement. The compensation of \$1,650.00 is achieved by the Landlord refraining from depositing the Tenant's October rent.

Conclusion

I dismiss the Tenant's application to cancel the Two-Month Notice to End Tenancy and hereby grant an order of possession pursuant to s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit **two (2) days** after being served with the order for possession by the Landlord.

Pursuant to s. 62 of the *Act*, I direct that the Landlord refrain from depositing the Tenant's rent for the month of October in satisfaction of the Tenant's compensation under s. 51(1) of the *Act*.

If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia and 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 Section 9.1(1) of the Residential Tenancy Act.
Dated: October 13, 2021