



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNQ, LAT, MNDCT, LRE, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A lock change authorization pursuant to section 31;
- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Notice") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended ("the tenant"). The landlord attended. Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained. Neither party called witnesses.

Each party confirmed the email address to which this Decision shall be sent.

I informed the parties that no recording of the arbitration was permitted. Each party stated they were not recording the hearing.

Preliminary issues are addressed.

1. Preliminary Issue - Multiple Remedies

The tenant applied for multiple remedies under the *Act* some of which were not sufficiently related to one another.

Section 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether the tenancy is ending.

As a result, I exercised my discretion to dismiss, with leave to reapply, all the claims on the tenant' application except for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Notice") pursuant to section 49;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

2. Preliminary Issue - Burden of Proof

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

Residential Tenancy Branch Rules of Procedure - Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first.

Consequently, even though the tenant applied for dispute resolution and is the Applicant, the landlord presented their evidence first.

Background and Evidence

The parties explained the unit is on the main floor of a converted house. The landlord has a business on the same floor. There are other rented apartments in the building. The landlord requested an Order of Possession as they intended to expand her business and required the tenant' unit to do so. The tenant objected to the application and asserted the landlord did not have good faith in the issuance of the Notice.

The parties agreed as follows.

INFORMATION	DETAILS
Type of tenancy	monthly
Date of beginning	December 1, 2018
Date of ending	ongoing
Length of tenancy	3 years
Monthly rent payable on 1 st	\$900.00
Security deposit	\$450.00
Date of Application	July 30, 2021

The parties agreed as follows with respect to the landlord's Notice:

INFORMATION	DETAILS
Type of Notice	Two Month Notice to End Tenancy for Landlord's Use
Date of Notice	July 30, 2021
Effective Date of Notice	September 30, 2021
Date and Method of Service	Personal on July 30, 2021
Effective Date of Service	July 30, 2021
Application for Dispute Resolution filed - date	July 30, 2021

The landlord's Two Month Notice form was an older version of Form #RTB-32 which was revised in March of 2021. The Notice stated the landlord intended to occupy the unit.

The tenant testified as follows. The parties had a good relationship in the early period of the tenancy. However, in August 2020, the landlord requested an increase in rent. The parties agreed the landlord did not issue a notice to increase rent in the RTB form.

The tenant testified they initially agreed and paid the increase for several months. In July 2021, they learned the increase was greater than the permissible increase under BC regulations.

In early July 2021, the parties had a contentious meeting, and the tenant demanded the return of the overpayment from August 2020. The landlord eventually complied and returned the disputed amount to the tenant.

The tenant expressed the belief the Notice was served within a few weeks of the argument in retaliation for their refusal to pay the rent increase and for demanding the return of the overpayment. The tenant asserted the Notice was not issued in good faith.

The landlord denied the tenant's version of events or description of their motive. The landlord testified they merely explained that the building's utility costs had risen. They said the amount of the increase was decided after a discussion and upon mutual

agreement. They denied seeking revenge or retaliation as claimed by the tenant. The landlord asserted that the sole purpose for the issuance of the Notice was to obtain space for the expansion of her business which had recently become significantly busier.

The tenant requested the Notice be cancelled as the landlord did not issue it in “good faith”.

The landlord asserted they genuinely wanted to expand her business premises to include into the unit. The landlord requested an Order of Possession.

Analysis

To evict a tenant for landlord’s use of the property, the landlord has the burden of proving the reasons on the Notice. The parties had contrasting narratives which were provided in detail in the 57-minute hearing.

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

The tenant raised the issue of the intention of the landlord. The tenant questioned whether the landlord’s plan to occupy the unit for a business expansion was genuine. The tenant expressed a lack of confidence in the landlord’s stated plan. The tenant argued the landlord issued the notice in retaliation for the tenant’s refusal to pay more rent than allowed under provincial regulations and the tenant’s demand for refund of the overpayment.

The tenant asserted that the landlord has not issued the Two Month Notice in good faith but instead simply wants to get rid of the tenant, once a valued tenant, and now estranged. The motive, the tenant assert, is retaliation.

The Residential Tenancy Branch Policy Guideline # 2 states *good faith* is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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 Two Month Notice.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose.

When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy.

The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In assessing the tenant's credibility, I found the tenant sincere, persuasive, matter of fact and believable. Where the parties' testimony differs, I give greater weight to the tenant's version of events.

The tenant has raised the good faith intention of the landlord which I find has some basis.

While the landlord denied they initiated a discussion about a rent increase, I accept the tenant's testimony that the parties acrimoniously discussed the rent increase earlier in the same month that the landlord issued the Notice, July 2021. I also accept the tenant's version of events that they demanded the return of the amount of the increase when they learned it was in violation of the regulations and this was a source of conflict.

I find that the timing of the Two Month Notice so quickly after a discussion about the return of the rent increase, raises doubts about the bona fide intentions of the landlord.

While the landlord provided some explanation about the reason for issuing the Notice, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice. The landlord did not provide any supporting evidence of her plans to

expand her business to occupy the unit. The landlord provided no evidence that this was the only means by which such expansion could take place.

I find there are reasonable doubts about the intention of the landlord to expand her business to occupy the unit at the end this tenancy. I find the landlord has not met the burden of proof that they intend to do what they said in the Notice.

In any event, while the landlord may indeed intend to use the rental unit for the purposes stated on the Notice, I find there may be additional reasons fueling the issuance of the Notice. I find the landlord has not met the burden of proof that they do not have an ulterior motive in issuing the Notice. Therefore, I find that the good faith argument has merit.

Consequently, I cancel the Two Month Notice. This tenancy will continue until it is ended in accordance with the agreement and the *Act*.

As the tenant have been successful in this application, the tenant is entitled to be reimbursed for the filing fee. Pursuant to section 72, the tenant is authorized to deduct this amount from rent payable in the amount of \$100.00 for one month only.

Conclusion

The tenant's claims are dismissed with leave to reapply except for the claims under section 47 and 72. The tenant's application to cancel the Two Month Notice is allowed. The Two Month Notice has no continuing force or effect. This tenancy will continue until ended according to the *Act*.

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: November 26, 2021

Residential Tenancy Branch