



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** CNL, FFT

### **Introduction**

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 02, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated June 29, 2021 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing with two legal advocates and an interpreter. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

### **Preliminary Matters**

#### ***Amendment***

The Legal Advocate for the Tenant asked to amend the Application to add a request for an order that the Landlord comply with the *Residential Tenancy Act* (the “Act”), tenancy agreement or *Residential Tenancy Regulation* in relation to renovations occurring at the rental unit. The Landlord agreed to this amendment and therefore I allowed the amendment.

### ***Adjournment***

During the hearing, an issue arose in relation to a possible adjournment to allow the Landlord to bring someone to the next hearing who could assist given a language barrier. It was determined that the only issue for the Landlord with proceeding on the hearing date was the language barrier. Both parties agreed to the Interpreter interpreting for both the Tenant and Landlord. I found this acceptable because the Interpreter was a certified legal interpreter and had no relationship or association with the Tenant beyond being asked to interpret for the Tenant at the hearing. Further, the Landlord confirmed they were comfortable with proceeding with the hearing on the hearing date with the Interpreter assisting them. In the circumstances, I proceeded with the hearing. The Interpreter did interpret for the Tenant and Landlord throughout the hearing when required.

### ***Evidence and Service***

The Legal Advocate referred to evidence being submitted to the RTB which I did not have before me. I told the Legal Advocate I would only consider the evidence that was before me on the Application.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and evidence.

The Landlord testified that they received the hearing package the Friday before the hearing. The Landlord then testified that they cannot remember the date of the original package received. The Landlord testified that they received evidence in relation to the renovation issue October 22, 2021.

The Legal Advocate testified that the hearing package was served August 10, 2021. The Legal Advocate testified that documents relating to the renovation issue were sent to the Landlord by registered mail October 07, 2021 and that Tracking Number 985 relates to this.

The Tenant submitted documentary evidence of service in relation to Tracking Number 985 and Tracking Number 826CA. I looked both tracking numbers up on the Canada Post website. The website shows the package with Tracking Number 826CA was sent July 22, 2021 and delivered August 10, 2021. The website shows the package with Tracking Number 985CA was sent October 07, 2021 and delivered October 22, 2021.

Based on the documentary evidence of service and Canada Post website information, I am satisfied the Landlord was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Act*. Based on the Canada Post website information, I find the packages were sent July 22, 2021 and October 07, 2021. The Landlord cannot avoid or delay service by failing to pick up registered mail. I find the Landlord was deemed to have received the packages July 27, 2021 and October 12, 2021 pursuant to section 90(a) of the *Act*. I find the Tenant complied with rules 3.1 and 3.14 of the Rules in relation to the timing of service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### **Issues to be Decided**

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to an order that the Landlord comply with the *Act*, tenancy agreement or *Residential Tenancy Regulation*?
4. Is the Tenant entitled to recover the filing fee?

### **Background and Evidence**

A written tenancy agreement was submitted as evidence. The parties agreed the tenancy agreement is between the Tenant and prior owner of the rental unit. The parties agreed that the Landlord purchased the rental unit and the written tenancy agreement simply continued. The Landlord testified that they took possession of the rental unit June 19, 2021.

The tenancy agreement started February 01, 2021 and is for a fixed term ending January 31, 2022. Rent is \$1,100.00 per month due on the 30<sup>th</sup> day of each month. The Tenant paid a \$550.00 security deposit. The agreement has an addendum.

**Notice**

The Notice was submitted. The grounds for the Notice are as follows:

The rental unit will be occupied by the landlord or the landlord's close family member...

The Notice states that the Landlord or the Landlord's spouse and the child of the Landlord or Landlord's spouse will occupy the rental unit.

The parties agreed the Notice was served, and received by the Tenant, June 29, 2021.

The Legal Advocate and Tenant took the following position in relation to the Notice. The Landlord cannot end the fixed term tenancy. The Landlord does not intend to occupy the rental unit or have a close family member occupy the rental unit. There was a water leak in the rental unit prior to the eviction notice being issued and it is the water leak that is the issue. The Tenant does not think the Landlord will occupy the rental unit because the house is currently rented out to four tenants and the Tenant only lives in a one bedroom suite. The Tenant once heard the Landlord say they would re-rent the unit to a friend after the renovations are complete to recover the costs of the renovations. The Landlord did not mention an eviction when the Tenant obtained the Landlord's bank information to pay rent in June of 2021. The Tenant believes the Notice is a result of the parties disagreeing about the use of the garage and renovations.

The Landlord took the following position. They want to use the property for their own use. The previous owner had divided the house in a very messy way. There is or was water leaking in the rental unit. The Landlord must do a lot of repairs to the house so they can use it for their own purpose. The house is two floors. The Landlord and their family are living in the upper suite which has three bedrooms. The Landlord has two children and needs more than three bedrooms. The Landlord needs a workshop as well as space to store items related to their work. The Landlord also wants to have a room for their children to do activities in. Further, the Landlord's cousin's child lives with them now and needs a bedroom. Currently, only the Landlord and their family as well as the Tenant live in the house. The Landlord does not intend to re-rent the unit.

In reply, the Tenant testified that the house has four units all with their own kitchen and bathroom and therefore the Tenant does not believe the Landlord will occupy these.

The Tenant also testified that they no longer know what the layout upstairs is given the renovations that have occurred.

### ***Renovations***

The Tenant sought the following orders:

- Orders restricting the times during which the Landlord can do renovations so that these are done between 9:00 a.m. and 8:00 p.m. Monday to Friday. Renovations should not be done on weekends or statutory holidays. If renovations are done on the weekend, the Landlord should communicate this to the Tenant with an explanation as to why this needs to occur and what the disruption to the Tenant will be.
- Orders requiring the Landlord to give the Tenant 24 hours written notice prior to doing renovations that will affect the Tenant's use of the rental unit such as when hot water will be turned off or ceiling particles will be disturbed and fall on the Tenant or their belongings.

The Legal Advocate and Tenant took the following position. The Tenant requires orders that the Landlord comply with the *Act* and cease breaching the Tenant's right to quiet enjoyment caused by late night renovations. The disturbances to the Tenant have been frequent and unreasonable in nature. The renovations started June 20, 2021 and are ongoing. The renovations have been excessively loud and have occurred at unreasonable times on unreasonable days. Renovations have occurred early in the morning, after 8:00 p.m. and as late as midnight. Renovations have occurred frequently on weekends and holidays. Renovations have occurred directly above the Tenant's bedroom which has affected the Tenant's ability to sleep. Renovations have caused water to leak from the Tenant's ceiling disrupting their ability to enjoy the rental unit. The water leak is shown in the video evidence submitted. The Tenant has had to clean the water up. The Landlord has not cleaned up the issues in the rental unit resulting from the renovations. One time, dust fell on the Tenant's food and they later were ill due to this. A doctor told the Tenant their illness could have been caused by the dust. On June 27, 2021, the hot water was shut off at midnight without notice. In August, the water was shut off without notice. Internet is part of the tenancy agreement and this has been cut off on more than one occasion.

The Legal Advocate relied on Policy Guideline 6 for the Tenant's position.

The Landlord took the following position. The renovations started in the middle of June. The Landlord has not hired anybody to do the renovations, it is their husband who is doing them. The renovations are done in accordance with law. Renovations are not occurring at midnight. Renovations are only occurring Monday to Friday between 8:00 a.m. and 7:00 or 8:00 p.m. and weekends between 9:00 a.m. and 5:00 p.m. Renovations have been occurring on the weekend since September. The Landlord told the Tenant about the renovations. The Landlord agrees the renovations are quite noisy and would disrupt the Tenant. The Landlord does not agree water is leaking in the rental unit. The hot water requires a pilot light and this has gone off in the past, the Landlord did not shut off the hot water. The Landlord was not able to get someone to deal with the hot water issue at midnight but it was later dealt with. The Landlord has not shut the internet off, the internet does not always work due to the age of the house and electrical.

The relevant documentary evidence submitted includes:

- The Notice
- The tenancy agreement
- Two videos of water dripping from the ceiling of the rental unit
- A video showing belongings and some dust in what looks like a fireplace
- 12 photos relating to renovations occurring at the residential property

## **Analysis**

### ***Notice***

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(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.

Policy Guideline 2A deals with ending a tenancy for occupancy and states in part:

#### **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)).

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.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not 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 dishonest motive.

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. I find the Tenant disputed the Notice in time as it was disputed July 02, 2021, within 15 days of June 29, 2021, when the Notice was received.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I am not satisfied based on the evidence provided that the Landlord or a close family member intends to occupy the rental unit. The parties took conflicting positions on this point. The Landlord has not submitted any documentary evidence to support their position. I find some further compelling evidence to support the Landlord's position is required in these circumstances given the conflicting testimony about the layout of the house and how many separate units and bedrooms it currently has as well as the evidence from both parties that extensive renovations are required and occurring. I note that a landlord cannot end a tenancy pursuant to section 49(3) and then renovate the rental unit rather than occupy it within a reasonable period after the effective date of the notice.

In the absence of further compelling evidence, I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

### ***Renovations***

Section 28 of the *Act* states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.



Policy Guideline 6 deals with the entitlement to quiet enjoyment and states in part:

#### B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I accept that the Landlord is renovating the house and that the renovations are quite noisy and do disrupt the Tenant as the parties agreed on this. I accept that the renovations do infringe on the Tenant's right to quiet enjoyment to some extent. In making this finding, I have also considered that the renovations started in June and were ongoing at the end of October.

I find it appropriate to restrict the time the Landlord can do renovations as requested by the Tenant because it is obvious that renovations that are quite noisy and do disrupt the Tenant should not be occurring early in the morning or late at night. Further, the Landlord testified that they are only doing renovations Monday to Friday between 8:00 a.m. and 7:00 or 8:00 p.m. and weekends between 9:00 a.m. and 5:00 p.m. and therefore I find restricting the Landlord to similar times and days reasonable.

Pursuant to section 62(3) of the *Act*, I order the following:

- **The Landlord is ordered to only have renovations done on the residential property between 8:30 a.m. and 8:00 p.m. Monday to Friday and between 9:00 a.m. and 5:00 p.m. on weekends or statutory holidays.**

I find the above order balances the Landlord's right to renovate their property and the Tenant's right to quiet enjoyment of the rental unit. I have allowed the Landlord to start renovations at 8:30 a.m. Monday to Friday because this strikes a balance between the Tenant's request and what the Landlord is currently doing. I have allowed the Landlord to conduct renovations on the weekend because I find it unreasonable to expect the Landlord not to renovate on the weekend, particularly when it is the Landlord's husband doing the work. I find restricting renovations to Monday to Friday would unduly restrict the Landlord's right to renovate their property.

I do agree that it is reasonable to require the Landlord to provide notice to the Tenant of the renovations being done, particularly when these will affect the Tenant's use of the rental unit. I find this reasonable given the extent of the renovations as shown in the Tenant's photos. I also find this reasonable given the concession by the Landlord that the renovations are quite noisy and do disrupt the Tenant. I find requiring the Landlord to give written notice of the renovations balances the Landlord's right to renovate their property and the Tenant's right to quiet enjoyment.

Pursuant to section 62(3) of the *Act*, I order the following:

- **If renovations to the residential property are going to occur on the weekend or a statutory holiday, the Landlord must provide the Tenant with written notice advising the Tenant of this along with anticipated times that the renovations will occur and any anticipated disruptions to the Tenant's use of the rental unit. The written notice must be provided to the Tenant at least 24 hours before the renovations are anticipated to begin. The written notice can be in the form of an email.**
- **Regardless of when the renovations are going to occur, the Landlord must provide the Tenant with written notice advising the Tenant of any anticipated disruptions to the Tenant's use of the rental unit such as water being shut off or ceiling particles being disturbed such that they may fall on the Tenant or their belongings. The written notice must be**

**provided to the Tenant at least 24 hours before the renovations are anticipated to begin. The written notice can be in the form of an email.**

In addition to the above, I note that the Landlord must always comply with their obligation to protect the Tenant's right to quiet enjoyment as set out in section 28 of the *Act*, whether renovations are occurring or not.

### ***Filing Fee***

Given the Tenant was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

### **Conclusion**

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Landlord is ordered to do the following:

- **The Landlord is ordered to only have renovations done on the residential property between 8:30 a.m. and 8:00 p.m. Monday to Friday and between 9:00 a.m. and 5:00 p.m. on weekends or statutory holidays.**
- **If renovations to the residential property are going to occur on the weekend or a statutory holiday, the Landlord must provide the Tenant with written notice advising the Tenant of this along with anticipated times that the renovations will occur and any anticipated disruptions to the Tenant's use of the rental unit. The written notice must be provided to the Tenant at least 24 hours before the renovations are anticipated to begin. The written notice can be in the form of an email.**
- **Regardless of when the renovations are going to occur, the Landlord must provide the Tenant with written notice advising the Tenant of any anticipated disruptions to the Tenant's use of the rental unit such as water being shut off or ceiling particles being disturbed such that they may fall on the Tenant or their belongings. The written notice must be**

**provided to the Tenant at least 24 hours before the renovations are anticipated to begin. The written notice can be in the form of an email.**

The Tenant can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

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

Dated: November 04, 2021

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Residential Tenancy Branch