



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

File #310047759: RR, RP, FFT

File #310050959: CNL, OLC, RR, FFT

### Introduction

The Tenant brings two applications under the *Residential Tenancy Act* (the “*Act*”).

In the Tenant’s first application, filed on August 31, 2021, they seek the following relief:

- An order pursuant to s. 65 of the *Act* to reduce rent for repairs, services, or facilities agreed upon but not provided;
- An order pursuant to s. 32 of the *Act* for repairs; and
- An order pursuant to s. 72 for return of their filing fee.

The Tenant’s second application, filed on October 4, 2021, pertains to the following claims:

- An order to cancel a Two-Month Notice to End Tenancy dated September 24, 2021 (the “Two-Month Notice”) pursuant to s. 49 of the *Act*;
- An order pursuant to s. 62 of the *Act* that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- An order pursuant to s. 65 of the *Act* to reduce rent for repairs, services, or facilities agreed upon but not provided; and
- An order pursuant to s. 72 for return of their filing fee.

G.P. appeared on her own behalf as Tenant. The Landlord was represented by counsel, D.P.. The following witnesses were called by the Landlord to provide evidence: B.L. (the Landlord’s son), H.Z. (Property Manager for the Landlord), and S.C. (B.L.’s coach).

The parties affirmed to tell the truth during the hearing. I advised 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.

S.C. does not speak English and provided evidence in Mandarin. H.Z. certified that he was able to translate English to Mandarin, and vice versa, and translated S.C.'s evidence.

The Landlord advised that they served the Two-Month Notice on the Tenant by way of registered mail but was unable to confirm when the registered mail was sent. The Tenant, however, acknowledged receiving the Two-Month Notice on September 24, 2021. I find pursuant to s. 71(2) that the Tenant was sufficiently served with the Two-Month Notice on September 24, 2021 based on their acknowledged receipt of the notice on that date.

The Tenant advised that she served the Landlord with the Notice of Dispute Resolution for her second application, including her evidence, by way of registered mail sent on October 21, 2021. The Landlord acknowledges receipt of the Notice of Dispute Resolution and the Tenant's evidence, as well as their evidence from their first application. I find pursuant to s. 71(2) of the *Act* that the second Notice of Dispute Resolution and the Tenant's evidence from both applications were sufficiently served on the Landlord based on their acknowledged receipt of the same.

The Landlord advised that they had prepared documentary evidence but failed to serve it on the Tenant or provide it to the Residential Tenancy Branch. As the evidence was not provided or served in accordance with the Rules of Procedure, the hearing proceeded without its inclusion.

#### Preliminary Issue – Tenant's Claims

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 disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties that the primary issue raised in the Tenant's applications was whether the tenancy would continue or end based on the Two-Month Notice. The other aspects of the Tenant's claims may not be relevant as the tenancy could be ended on the determination of the enforceability of the Two-Month Notice.

Pursuant to Rule 2.3 of the Rules of Procedure, I sever the Tenant's claims under sections 32 (order for repairs), 62 (order that the Landlord comply), and 65 (order for rent reduction). If the tenancy continues, these claims will be dismissed with leave to reapply. If the tenancy ends by virtue of the Two-Month Notice, these claims will be dismissed without leave to reapply, with the exception of any claim the Tenant may have for rent reductions for past rent paid as contemplated by s. 65(1)(f) of the *Act*.

The hearing proceeded on the sole issue of whether the Two-Month Notice should be enforced or not.

#### Issue(s) to be Decided

- 1) Whether the Two-Month Notice should be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?
- 3) Is the Tenant entitled to return of their filing fee?

#### 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 confirmed that tenancy began on April 1, 2019. The Tenant provided a copy of the written tenancy agreement. As set out under the tenancy agreement, rent was \$2,500.00, which was reduced to \$2,100.00 after a pool at the property was no longer maintained by the Landlord. Rent is payable on the first day of the month. A security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 is currently held in trust by the Landlord.

The Landlord issued the Two-Month Notice on the basis that their son would be moving into the residential property. The rental is a single detached home.

B.L., the Landlord's son, indicates that he is taking courses to become a certified professional golf coach. These courses are being taken with S.C., who confirmed that he is instructing B.L.. These courses take place four days a week. B.L. began his certification in April 2021 and will complete his certification in the next year and half. B.L. says he would like to continue to work with S.C. after receiving his certification as S.C. is a proficient golfer.

B.L. says that his courses take place in a community that is near to the rental unit. B.L. further states that he currently lives in a condominium in a neighbouring municipality and commutes for his courses with S.C.. Both B.L. and S.C. say that B.L. has been late for his courses on occasion as the commute can be long and traffic can cause delays.

B.L. further says that the rental unit is larger and will better accommodate the storage of his golf equipment than his current accommodation. Further, B.L. says that his parents own a house near to the rental unit and being closer would better accommodate visiting them.

The Tenant says that Landlord lives primarily in China and that it is her understanding that the Landlord has not been to Canada in some time. B.L. confirms that his parents do live in China and have visited Canada less frequently due to the COVID-19 Pandemic.

The Tenant alleges the Two-Month Notice was issued in bad faith. The Tenant says that there are numerous repair issues that the Landlord has failed to address despite repeated requests that repairs be undertaken. It appears that the issue with repairs began in May 2021 following a break in a water pipe. The Tenant further states that there has been a new leak in a water pipe that occurred within the past week, but the Landlord has not yet responded to her request for repairs.

The Tenant says that they have an issue with rodents and has provided various pictures as evidence showing the extent of the rodent issue. The Tenant says that they have notified the Landlord about the rodent issue some years ago, but the issue continues and have gotten worse since the water leak from May 2021.

H.Z., the Landlord's property manager, says that the Landlord has spent over \$10,000.00 on repairs since the Tenant has occupied the rental unit. H.Z. further stated that the issues with respect to the rodents were due, in part, to the Tenant's uncooperative behaviour. Landlord's counsel argues the pictures evidence a level of

uncleanliness which he says show the Tenant is partly to cause for the ongoing issue. These are denied by the Tenant, though the Tenant admits that she did not permit rodent poison to be used as she has a dog and that rodent poison is no longer permitted.

The Tenant argues that the Landlord appears unwilling to repair the residential property given the current rent. She further argues that it is the Landlord's intention to re-rent the residential property after the Tenant vacates the residential property if the Two-Month Notice is upheld.

The Tenant highlights various email correspondence with the property manager pertaining to the issue of repairs. I reproduce the following passages from some of the emails provided by the Tenant:

Email sent by property manager on June 15, 2021:

We have got the quotation back from the Removing Mold Company and have forwarded it to the owner. According to the owner, the repair fee is way higher than her estimate. And it is not safe to live there. So the owner is asking if you are willing to move out and look for a new place with a compensation of 1 month.

Please let me know. Thanks

Email sent by property manager on August 13, 2021:

According to the pictures [Redacted] took yesterday, we asked the professionals. They told us, this is not just a simple repair of the walls. Rats will appear repeatedly and the job will become an endless job. However, the owner does not have enough financial ability to afford such major repairs for the house. The owner hopes to end the lease agreement and she is willing to give you one-month-rent as a compensation.

Email sent by property manager on August 19, 2021:

Since the owner cannot afford it any more, currently she is asking for some advice from related departments regarding taking the place back. We will let you know if we hear anything from the owner. Thanks

In reproducing the above emails, I redacted any personal identifying information. Other than this, the emails are exact copies of the relevant emails provided by the Tenant in her evidence.

Landlord's counsel admits that there appears to have been a change in the Landlord's intention based on the above emails but was unable to say when that occurred. The Landlord argues that the prior discussions between the Tenant and the property manager do not invalidate the good faith intention of the Landlord's son to occupy the rental unit nor should they limit the property owner's right to use the property as they wish. Landlord's counsel further argues that if the Landlord's son does not occupy the rental unit, then the Tenant has claim to compensation equivalent to 12-months rent by virtue of s. 51 of the Act.

### Analysis

The Tenant applies to cancel the Two-Month Notice and for return of their filing fee.

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.

Policy Guideline 2A provides the following guidance with respect to the good faith requirement imposed by s. 49:

*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.

(emphasis added)

Policy Guideline 2A makes clear that it is the Landlord's obligation to prove the good faith requirement set out under s. 49 and that they must satisfy me that there is no ulterior motive. This must be proven by the Landlord on a balance of probabilities.

I have reviewed the emails provided by the Tenant and place significant weight on the emails sent by the property manager on June 15, 2021 and on August 13 and 19, 2021, which are reproduced above. I accept the Tenant's evidence, which was not directly disputed by the Landlord, that there are various outstanding issues regarding repairs to the rental unit and management of the rodent issue.

H.Z. says the Landlord has spent over \$10,000.00 in repairs. I have no reason to doubt this. However, the overall cost of the repairs is not strictly relevant to a Landlord's obligation to maintain the residential property in a state of repair and decoration as required by s. 32 of the *Act*. Further, the emails from the property manager indicate that the Landlord was aware there are outstanding repair issues and that the repairs could not be undertaken by the Landlord as they lack the ability to pay for the repairs.

I note that the Tenant's original application related to the issue of repairs and rent reduction. Though I have severed these aspects of the Tenant's claim, I take note of that the initial application was filed on August 31, 2021. The Tenant provided proof of service for the original application package showing it was delivered on September 21,

2021. The Landlord's property manager signed indicating it was received by them on September 21, 2021. At the outset of the hearing, Landlord's counsel acknowledged receipt of the Tenant's initial application evidence materials.

Landlord's counsel argues that the issue of repairs is not related to whether the Landlord had proven their good faith intention that the son would move into the rental unit. Counsel referred me to several cases and placed particular emphasis on *Spurr v Moriah Enterprises Ltd.*, 2019 BCSC 2211 ("*Spurr*"), which was argued to be analogous to the present circumstances.

I have reviewed *Spurr*, which emphasizes, as supported by Policy Guideline 2A, that a landlord must demonstrate that they are acting in good faith and that there is no ulterior motive for ending the tenancy (see para 44). No ulterior motive was found to be present by the arbitrator in *Spurr* and the original decision was upheld on judicial review.

In the present circumstances, there is clear evidence of an ulterior motive in the form of the property manager's emails, which show an ongoing issue with respect to the state of repair of the rental unit. I make no findings with respect to the specific issue of repairs and only note that the property manager's emails indicate that there was an active dispute regarding repairs in June and August 2021. The Landlord was clearly aware of the dispute and asked that the Tenant move out of the rental unit voluntarily as the rental unit was no longer safe to live in and that the Landlord could not afford to undertake the necessary repairs.

Further, the email from the property manager of August 19, 2021 states that the Landlord was "asking for some advice from related departments regarding taking the place back". This email clearly demonstrates that the Landlord was considering her options to end the tenancy in the face of the Tenant's refusal to end the tenancy by way of mutual agreement. The Two-Month Notice was issued on September 24, 2021, which was a mere three days after the Landlord received the Tenant's initial application on September 21, 2021.

On balance, I find that the Landlord has an ulterior motive in issuing the Two-Month Notice, which appears to be an attempt by the Landlord to avoid their obligations under s. 32 of the *Act*. I make this finding based on the chronology of events in the present matter and on the three emails from the property manager highlighted above.



Based on my finding that the Landlord has an ulterior motive in issuing the Two-Month Notice, I find that the Landlord has failed to demonstrate that they are acting in good faith without ulterior motive as required by s. 49 of the *Act*. Accordingly, I cancel the Two-Month Notice. The tenancy shall continue until it is ended in accordance with the *Act*.

### Conclusion

The Two-Month Notice is hereby cancelled. The tenancy shall continue until it is ended in accordance with the *Act*.

As the tenancy continues, those aspects of the Tenant's claim that were severed pursuant to Rule 2.3 of the Rules of Procedure are dismissed with leave to reapply.

Given that the Tenant was successful in their application, they are entitled to return of their filing fee. I note that the Tenant applies for return of their filing fee for both applications. Strictly speaking, the sole issue of the hearing related to her second application. Further, the Tenant could have avoided the second filing fee by filing an amendment to her initial application. The Landlord should not be responsible for the additional filing fee. The claim for return of the second filing fee is dismissed without leave to reapply.

Pursuant to s. 72(1) of the *Act*, I order that the Landlord pay the Tenant's filing fee for one of their applications. I exercise my discretion under s. 72(2) of the *Act* and direct that the Tenant withhold \$100.00 from rent payable to the Landlord on **one occasion** in full satisfaction of their 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 *Residential Tenancy Act*.

Dated: January 12, 2022

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Residential Tenancy Branch