



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- an Order for regular repairs, pursuant to section 32.

The tenant, the landlord and the landlord's property manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord joined the conference call 13 minutes after the hearing started. The property manager provided testimony on behalf of the landlord for the first 13 minutes of the conference call. The landlord was provided with a full opportunity to be heard. The testimony heard before the landlord joined the call was predominantly uncontested details regarding the service of documents and the terms of the tenancy agreement. The property manager did not request the hearing be delayed while waiting for the landlord. The landlord took no issue with the hearing starting prior to his arrival.

Both parties confirmed their email addresses for service of this Decision.

The tenant testified that the landlord was served with this application for dispute resolution and the tenant's evidence via email on October 13, 2021. The property manager confirmed receipt of the above documents via email on October 13, 2021. I find that the landlord was sufficiently served, for the purposes of this *Act*, with the

tenant's application for dispute resolution and evidence, pursuant to section 71 of the *Act*, on October 13, 2021, because receipt was acknowledged on that date. The landlord did not submit any documentary evidence to the residential tenancy branch for consideration. The property manager testified that no evidence was served on the tenant. The above testimony was not disputed by the tenant.

Preliminary Issue- Amendment

The tenant's application for dispute resolution lists the short version of the landlord's first name and mis-spells the landlord's last name. The landlord testified to the correct spelling of his name in the hearing. Pursuant to section 64 of the *Act*, I amend the tenant's application for dispute resolution to correctly spell the landlord's name.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice to End Tenancy for Cause (the "Two Month Notice") and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Two Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Two Month Notice.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on July 15, 2019 and is currently ongoing. Monthly rent in the amount of \$1,350.00 is payable on the first day of each month. A security deposit of \$675.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The property manager testified that he posted the Two Month Notice on the tenant's door in October 2021 sometime before the tenant served the landlord with notice of this hearing.

The tenant testified that on October 6, 2021, the landlord attended at the subject rental property drunk and threw the Two Month Notice at him. The tenant entered into evidence a Two Month Notice dated September 30, 2021. The Two Month Notice entered into evidence by the Tenant is signed by the landlord and states that the tenant must move out of the subject rental property by November 30, 2021.

Page two of the Two Month Notice, in which the landlord is required to state the reason for ending the tenancy, is left blank. The property manager testified that the Two Month Notice he posted on the tenant's door was not blank on page two and stated that the reason for ending the tenancy is that the landlord intends on moving into the subject rental property. The landlord did not provide a copy of the Two Month Notice into evidence.

The tenant testified that he only received one Two Month Notice from the landlord, and it was not posted on his door but thrown at him by the landlord. The landlord did not enter into evidence a proof of service document for the Two Month Notice.

The landlord testified that the Two Month Notice was served on the tenant because he sold his primary residence and needs somewhere to live. The landlord did not enter into evidence proof of the sale of his primary residence.

The tenant testified that he does not believe the landlord is acting in good faith. The tenant testified that landlord is only evicting him because he requested repairs be completed at the subject rental property and the landlord does not want to repair the subject rental property. The tenant testified that there was a flood in an apartment above the subject rental property and that the strata repaired some of the damage but that the remaining 70% was the responsibility of the landlord. The tenant entered into evidence photographs of a hole cut in the drywall and text messages between himself and the landlord on August 4, 2021. In the text messages the tenant requested repairs stemming from the flood. The landlord states that no further repairs are required and the tenant responds that further repairs are required.

Analysis

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,**
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

[emphasis added]

The Two Month Notice entered into evidence by the tenant does not state the reason for ending the tenancy. The property manager testified that the Two Month Notice served on the tenant stated the reason for ending the tenancy; however, the landlord did not enter a copy of the Two Month Notice allegedly posted on the tenant's door and did not provide proof of service of the Two Month Notice. I find that the landlord has not proved, on a balance of probabilities, that the tenant was served a different Two Month Notice than the one entered into evidence by the tenant.

I find that the tenant was served with the Two Month Notice entered into evidence in early October 2021. I find that the Two Month Notice served on the tenant was deficient because it did not state the ground for ending the tenancy as required by section 52(d) of the *Act*. I therefore find that the Two Month Notice dated October 6, 2021 is cancelled and of no force or effect.

I also note that Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Residential Tenancy Branch Policy Guideline #2A states:

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.

....

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.

I find that the landlord did not prove, on a balance of probabilities, that he planned to occupy the subject rental property and had no dishonest motive. The landlord did not provide any documentary evidence to refute the tenant's testimony and evidence and did not prove that his primary residence was sold, necessitating the tenant's eviction. I find that the Two Month Notice is cancelled for failure of the landlord to discharge his onus and for failure to comply with the form and content requirements of section 52 of the *Act*.

Conclusion

The tenant's claims for an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and an Order for regular repairs, are dismissed with leave to reapply.

The Two Month Notice is cancelled and of no force or effect.

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: February 15, 2022

Residential Tenancy Branch