



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, OLC

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

- cancellation of the Two Months' Notice to End Tenancy for Landlord's Use of Property pursuant to section 49;
- an order restricting the Landlord's right to enter is suspended or restricted pursuant to section 70;
- order for the landlord to comply with the Act, regulation, and/or tenancy agreement pursuant to section 62(3).

The tenants (AB and SR) attended the hearing. The landlords (ML and GL) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both parties called two witnesses each.

The March 3, 2022 hearing was adjourned because of service issues to be reconvened on March 11, 2021. The tenant testified, and the landlords confirmed, that the tenant served the landlords with the notice of dispute resolution form and supporting evidence package. The landlords testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

At the outset, I advised the parties of rule 6.11 of the Residential Tenancy Branch (the "**RTB**") Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing. I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

I note s. 55 of the *Act* requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, and/ or a monetary order if the application is

dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue #1

I issued an interim decision on March 3, 2022 with specific directions regarding the service of documents, outlining my expectations to both parties. I confirmed the email address of the landlords.

At the March 8, 2022 hearing both landlords advised they did not receive my letter by email. Once again, I confirmed the landlords email addresses carefully reading out each letter using a phonetic alphabet confirming the names and the service provider were correctly spelled and entered in the RTB system correctly. I confirmed there was no email address error. The landlords confirmed they want to receive the decisions by email. To ensure the landlords receive delivery of this decision, I have amended participants to include an additional "ML" with her mailing address. A copy of the decision will be sent to her email address as well.

Preliminary Issue #2

Landlord GL attended the hearing in his capacity as owner/landlord. Pursuant to Rule 7.13, I determined that GL should be added as a party to the dispute. Accordingly, GL was added as a party to the dispute effective March 4, 2022.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the Two Month Notice to End Tenancy for the Landlord's Use;

If the tenants fail in their application, are the landlords entitled to:

- 1) an order of possession;

Background and Evidence

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

The parties entered into an oral fixed term tenancy agreement starting July 1, 2021 through June 30, 2021. Monthly rent is \$3200.00 and is payable on the first of each month. No security deposit was paid. There is no written tenancy agreement.

The landlord issued a Two Month Notice to End Tenancy for Landlord's Use of Property on December 26, 2021 with an end of tenancy date of March 1, 2022. The Notice stated that the rental unit will be occupied by the landlord or the landlord's spouse.

The tenants challenged the legality of the Two Months' Notice stating that ML is not the landlord of the residential address and "is not the individual who rented the property and house to my wife and I."

Tenants' Evidence

The tenants are long term friends with Landlord GL. Landlord GL frequently stayed with the tenants at their residence when he returned from camp.

Prior to renting from the landlords, the tenants owned a property nearby. After selling their property they mentioned to Landlord GL they were looking for a place to live and over a cup of coffee the tenants and Landlord GL entered into an oral tenancy agreement. Landlord GL also agreed that the two laborers that lived in a trailer on the tenants' property could reside on the property and rent split accordingly. Landlord GL helped put up fencing around the laborers' trailer to create a small yard for them.

The tenants testified that Landlord GL rented the property on condition the tenants agreed to stay until at least June 30, 2022. Landlord GL did not want to find new tenants in the winter. The tenants agreed.

Rent was set at \$3200.00 per month reduced from \$4000.00. From the tenants understanding, the \$800.00 reduction was in lieu of room and board provided to Landlord GL when he came out of camp. The tenants state that Landlord GL rented them the entire house. They state proof that the agreement included the whole house is the fact that their furniture is in the suite downstairs. Rent paid to Landlord GL was divided between the two parties living on the property as follows: \$2700.00 (primary tenants) and \$500.00 (labourers). Tenants AB and SR collected the rent and paid the \$3200.00 to Landlord GL.

The tenants moved their livestock onto the property: a couple goats, a 25-year-old horse, and a pot belly pig. They moved based on the understanding this was a fixed term rental.

Landlord ML did stay in the basement suite in August 2021 with her granddaughter. The problems started around November 2021 when Landlord GL told the tenants that he was going away for a while and asked the tenants to "look after the place". Landlord GL confided to the tenants that he was leaving the country and separating from his wife, Landlord ML.

In November and December, Landlord ML started contacting the tenants asking after the whereabouts of her husband. Tenant AB knew ML from a prior work relationship. She stated that just being in Landlord ML's presence triggers PTSD symptoms. Siding with Landlord GL, the tenants refused to provide Landlord ML with any information.

On December 7, 2021, without providing notice to the tenants, Landlord ML showed up on the property. Landlord ML tried to access the downstairs suite and the shop. The tenants refused her access to either area. Landlord ML also took Landlord GL's truck. The tenants called the police, reporting the truck stolen and filing a complaint with the police about Landlord ML's unauthorized access to the property. The tenants state that the police told Landlord ML not to come onto the property.

Since the December incident, the relationship between the tenants and landlords have worsened. The tenants refuse to allow any persons associated with Landlord ML onto the premises. They also assert that knowing Landlord ML is pregnant, they do not want a child on the premises.

The tenants did not recognize Landlord ML's status as "landlord" stating that the agreement they entered into was between them and Landlord GL only. Further, not knowing Landlords ML and GL's marital status and based on the instructions from Landlord GL to take care of his property, the tenants believed they were protecting the interests of Landlord GL. They were concerned that Landlord ML was removing Landlord GL's property without authorization.

The tenants are very concerned about their livestock if evicted. If they cannot find homes for the animals, they may have to put the horse and the pig down. They have likely found homes for the goats but the places that take horses and pigs are full due to the fall flooding that happened late last year. Although Landlord ML may have found

possible boarding/homes for the animals, the tenants state they do not trust Landlord ML and would never act on a recommendation from her.

The tenants state that they plan to move to another province once they find homes for their animals.

Tenant Witness Statement #1

Witness AS provided the following affirmed testimony. AS states that he is not a sub-tenant but a tenant on the property. He stated that Landlord GL is aware of his tenant status. He and his partner are not "farm hands". Landlord GL helped AS and his partner move the trailer onto the property and helped fence a yard around the trailer. Landlord GL was fully aware of the rent payment arrangement. AS testified that AB, SR, AS and his partner were promised they could rent the property for one year.

Tenant Witness Statement #2

Witness MM, partner to AS confirmed the above information stating that the agreement with Landlord GL was for a one-year tenancy. The understanding with Landlord GL was for MM and AS to pay their portion of the rent to Tenant AB, who would then make one e-transfer to the Landlord's account.

Landlords' Evidence

Landlord ML testified she was completely taken aback at the level of animosity and anger directed at her from the tenants.

Landlord ML stated that every written tenancy agreement signed for that property stipulated that the tenancy was for the upstairs area only. The Landlords retained the shop, shared the driveway, and no notice was required to access the driveway. Landlord ML points to the reduction in rent from \$4000.00 to \$3200.00 as proof that the basement suite was not a part of the tenancy agreement. Landlord ML states that the tenancy is not a fixed term tenancy but a month-to-month tenancy.

Landlord ML stated when the tenants moved in on July 3, 2021, the Landlords were operating on the basis of friendship. There was a rec room downstairs that the tenants used to store some of their furnishings in. From her perspective there was nothing to be alarmed over.

On August 24, 2021, when Landlord ML visited, she noticed that the tenants had 'stuff downstairs'. When she asked Landlord GL, he told her the tenants hadn't enough time to organize their belongings. Landlord ML pressed Landlord GL to clarify the terms of the agreement with the tenants and put things in writing. He did not do so.

During her August visit, Landlord ML set up a make-shift kitchen bringing in a microwave and a table. Her husband was planning to build a complete kitchen in the suite. Landlord ML noticed that the tenants were standoffish and questioned her husband about their attitude. Landlord GL said he'd check with the tenants and came back to Landlord ML stating that everything was fine.

Landlord ML stated that she and Landlord GL started having marital problems. In the fall of 2021, Landlord GL disappeared. Concerned because she did not know the whereabouts of her husband, Landlord ML contacted the tenants knowing that they were friends with Landlord GL. Landlord ML stated that she considered Tenant AB a friend and had always felt comfortable approaching her. In the past, Tenant AB was Landlord ML's supervisor, and she always had a lot of respect for AB. Landlord ML was shocked when Tenant AB cut off all communication with her.

Not knowing if her marriage would survive, Landlord ML sought legal advice and was told to catalogue personal items. She flew to BC with a friend to catalogue the items herself to keep legal costs down.

Landlord ML was excited about visiting with the tenants in December. She planned to share news of her pregnancy and start looking at baby furniture. After 2 years of IVF, finally she conceived. She also wanted to go into the shop because some baby things were stored there along with her parents' furniture.

When Landlord ML arrived on the property, she noticed the pot belly pig was out of his pen, which was unusual. She walked toward the trailer when she was encountered Tenants AB and SR and was met with aggression and insults. Subsequent encounters went from bad to worse, and on one occasion a locksmith Landlord ML hired refused to get out of his vehicle fearing for his safety. Landlord ML also made a call to the police.

Landlord ML issued the Two Month Notice for Landlord's Use of Property because she needs to move back to BC because of IVF paternity laws in Ontario that could prohibit her from leaving Ontario once the baby is born. She states she felt forced to issue the

Notice because of the animosity directed at her from the tenants. She states she does not feel safe in their presence. The tenants wished horrible things would happen to her fetus. She said what is ridiculous about the situation – all she wanted was access to the basement suite.

Landlord ML further stated that the hay field was never part of the tenancy agreement. The landlords grow hay in the field and retain control of the field for income tax purposes. Also, her insurance provider stated that an owner must inspect the property every 90 days for coverage purposes.

Landlord ML stated she was willing to negotiate an end to tenancy. She needs to be in BC at latest by mid- April and stated that the tenants could remain on the property until April 15. Further, she has contacted several shelters and farms and found several that will either board the horse or possibly adopt the horse.

Landlord GL testified that all he wanted was "to accommodate friends". He acknowledged that Landlord ML told him to confirm the oral agreement in writing to avoid confusion. After Landlord ML asked him to do a formal tenancy agreement, Landlord GL asked Tenant AB if she wanted Landlord GL to write up an agreement for one year. The Tenant told him it wasn't necessary. He believed that the terms of the tenancy were clear to all parties.

Landlord GL confirmed that he asked the tenants to stay until June 30, 2022 to avoid having to look for tenants during the winter/spring. Landlord GL confirmed that "the boys" were renters and he helped move their trailer onto the property and fence a small yard for them.

Landlord GL stated he was aware that "the boys were paying \$500" to AB and SR. He did not care how the rent was divided up – at the beginning of each month, he wanted \$3200.00 deposited.

Landlord GL stated that the downstairs suite was never part of the tenancy agreement – it was always a separate rental unit for his or Landlord ML's use. He stayed in the suite when he returned from camp throughout the tenants' tenancy. When in the suite, he often ate meals upstairs with the tenants, thinking nothing of it – he saw it as "a good trade off" and he spent time in the company of friends.

Landlord GL said that in August 2021, when he spoke to the tenants about their rental unit he was "clear on it", the suite was not part of their rental unit, but he allowed them

to put their furniture in the suite because they had no place to store it – moving from a larger house to a smaller home.

Landlord GL also testified that the field was never part of the tenancy agreement because as landlords/property owners they needed to retain control over the field to claim farm status for income tax purposes. He believed that he had “repaired that issue in August” and communicated that belief to Landlord ML when she asked. Again, he reiterated, he just wanted to help out friends and did not ever think things could go so wrong.

Landlord GL stated that Landlord ML co-owns the property with him. He states Landlord ML has full access to everything on the property. Landlord GL stated he was genuinely upset when he learned of the Tenants behavior toward Landlord ML. He said the behavior was completely unacceptable and not something he condoned.

Landlord Witness #1

Witness DDO, stated that he accompanied Landlord ML onto the property in December. He confirmed that the tenants were aggressive and verbally abusive toward Landlord ML and him. He stated that the verbal attack on Landlord ML was unprovoked. The tenants would not allow Landlord ML into the suite or the shop and ordered them off the property.

Landlord Witness #2

Witness AH testified that she was asked by Landlord ML to deliver a Notice of Dispute Resolution Package – not related to this hearing but to a subsequent application filed by Landlord ML. The tenants refused to accept the package and the witness alleges she was assaulted by the tenant.

Analysis

Pursuant to s. 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify on a balance of probabilities, the reasons set out in the Two Month Notice.

The Two Month Notice was issued December 26, 2021. The tenants submitted their application to cancel the Two Month Notice on December 31, 2021, within the time limit

for doing so. The landlords must demonstrate that they meet the requirements of the following provisions of section 49(3) of the Act to end this tenancy.

Section 1 of the Act defines the following terms.

“landlord”, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner’s agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement or
 - (j) exercises powers and performs duties under the Act, the tenancy agreement or a service agreement;

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

“tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement;

“fixed term tenancy” means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends;

“rental unit” means living accommodation rented or intended to be rented to a tenant.

“residential property” means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located.
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels.

Section 49(2) and 49(3)(c) reads:

- 49** 2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy
- a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
 - b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be
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- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(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.

Residential Tenancy Policy Guideline 30, "Fixed Term Tenancies" sets out the conditions under which fixed term tenancies end.

C. ENDING A FIXED TERM TENANCY

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties, or under section F below (Early Termination for Family or Household Violence or Long-Term Care).

A landlord may end the tenancy if the tenant fails to pay the rent when due by serving a Notice to end Tenancy for Unpaid Rent or Utilities (form RTB-30) on the tenant. Alternatively, a landlord may end the tenancy for cause by serving a One Month Notice to end Tenancy for Cause (form RTB-33) on the tenant.

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A landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for landlord's use of property, which may include use by the purchaser of the property, the landlord must serve a proper Two Month Notice to End Tenancy for landlord's Use of Property (form RTB-32) on the tenant. Before a landlord can serve notice for the purchaser's use of the property, the landlord must have an agreement in good faith to sell the property, all conditions of the sale must have been satisfied and the purchaser must ask the landlord, in writing, to give notice to end the tenancy. The effective date of that Notice will be two months from the end of the month in which the Notice was served but, in any case, not before the end of the fixed term. The tenant may not, during the fixed term give the landlord a minimum 10-day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

In their application the tenants disputed the Two Month Notice on the ground that ML was "not the individual who rented the property and house to my wife and I. The landlord is GL who is ML's ex".

Landlord GL confirmed that ML is co-owner of the property. She was aware of and concurred with the terms of the tenancy agreement. Landlord GL entered into with Tenants AB and SR.

I find that ML is a landlord of said property as defined in the Act.

The tenants further write, "Rent is paid to him since July 1 2021 and whom we have an agreement with to rent the entire property until July 01 2022." Testimony from both of the tenants' witnesses, who reside on the residential property, confirm that the terms of the oral tenancy agreement with all four individuals was for a fixed term of one year. The term of the oral agreement was confirmed by Landlord GL.

Based on the affirmed testimony of both parties, I find that the tenants entered into an oral tenancy agreement for a one-year fixed term with Landlord GL from July 1, 2021 through to June 30, 2022 "respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit" pursuant to the Act.

The Two Months' Notice was issued December 31, 2021 with an effective date of March 1, 2022. As set forth in Section 49(2)(b)(iii) and Policy Guideline 30, "A landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the

end of the fixed term" except in specific circumstances viz., non-payment of rent or utilities or for cause. I find the Two Months' Notice was issued prematurely. I therefore allow the tenants' application to cancel the Two Months' Notice. The notice is of no force or continuing effect. The fixed term tenancy ends June 30, 2022. This tenancy continues until ended in accordance with the Act.

The tenants testified that the oral tenancy agreement with Landlord GL gave them full access to the rental unit and the residential property. Both landlords disagree. Landlord ML provided a copy of a prior written tenancy agreement that clearly delineated the residential property the landlord retained access to including the shop and the hay field.

With respect to the oral tenancy agreement before me, I rely heavily on the affirmed testimony of Landlord GL. Landlord GL was a credible witness. He presented straight forward testimony unfettered from emotion. He acknowledged mistakes made such as not writing up the tenancy agreement. He acknowledged the rent payment arrangement with "the boys". Finally, Landlord GL was the landlord who brokered the tenancy agreement with the tenants.

Landlord GL did not waiver from the intention to use the basement suite for family purposes. He stated he was planning to build a fully functioning kitchen in the suite rather than the "makeshift" kitchen consisting of a microwave. He described sleeping downstairs when back from camp and going upstairs for breakfast and some meals with the tenants and "didn't see any harm in that" since they were friends. He stated, "M has full access to everything I own" and "we own this property together".

Landlord GL testified the \$800.00 rent reduction was specifically because the landlords planned to use the basement suite as a temporary residence. Landlord GL and Landlord ML refer to August 24 when ML stayed in the suite with their granddaughter.

Although the tenants dispute the landlords retained interest in the basement suite, I note in their application they write, "Mr. L also currently resides on the property and is out of the country and is expected to return May 2022." The tenants assert that the \$800.00 reduction in rent was Landlord GL paying them for room and board.

Turning my mind to the argument put forth by the tenants, that the rent reduction was payment to them for room and board. I find that reasoning counterintuitive. There is no reason for the landlords to pay the tenants to access a suite they own. Perhaps the tenants may argue a portion of the rent reduction may have offset the cost of an

occasional meal, but I do not accept as fact that the landlord was paying the tenants room and board. Also, Landlord GL had a shop on the property that housed his motorcycles and tools and Landlord ML's parents' furniture. I suggest the unstated argument from the tenants is that Landlord GL has access to the basement suite, shop, and field but not Landlord ML.

I accept as fact the landlords reduced the rent by \$800.00 per month because they retained the basement suite as their personal living space.

I order the tenants to remove all of their belongings from the basement suite within two days after receipt of this decision and the order of possession.

The tenants requested an order to suspend or set conditions on the landlord's right to enter the rental unit or site. I dismiss the tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit or site, without leave to reapply.

There is very clearly a lengthy history of negative interactions between the tenants and in particular Landlord ML, which has even led to apparent police involvement. It is truly unfortunate that the parties have difficulty co-existing with one another, especially since the landlords can occupy the basement suite of this two-unit dwelling.

I find the tenants have conflated minor issues to excessive proportions. This includes their grievances over parking and access/egress to the property and entry to the rental unit and shop. Statements made by the tenants show that every action of Landlord ML, no matter how innocuous, are elevated to extraordinary proportions.

Given that this tenancy is continuing, I am issuing the following orders with a view to clarifying expectations between the parties in this tenancy.

1. I order the tenants to remove their belongings from the landlords' basement suite and give full and vacant possession to the landlords effective two days after receipt of this decision. To give effect to this order I issue the landlord with an order of possession solely for the basement suite. This order is not for the rental unit occupied by the tenants.
2. I order that, with the exception of true emergency situations, the landlords provide at least 24 hours written authorization to access any portion of the tenants' rental unit in accordance with the Act and Regulations. This request for authorization to access the tenants' rental suite must explain the reason for the

requested access and the requested time and must not be more frequent than once every 30 days as permitted under the Act.

3. I order the tenants provide the landlords full access and egress to the property including the basement suite, the shop, the field, the shared driveway, and parking.

Conclusion

As the Two Months' Notice was issued prematurely, I allow the tenants' application to cancel the Two Month Notice. This Notice is of no force and effect. This tenancy continues until ended in accordance with the Act.

1. I order the tenants deliver full and peaceable vacant possession and occupancy of the **basement suite** to the landlords within two days of being served with a copy of this order by the landlords.
2. I order that, with the exception of true emergency situations, the landlords provide at least 24 hours written authorization to access any portion of the tenants' rental unit in accordance with the Act and Regulations. This request for authorization to access the tenants' rental suite must explain the reason for the requested access and the requested time and must not be more frequent than once every 30 days as permitted under the Act.
3. I order the tenants provide the landlords full and unencumbered access and egress to the property including the basement suite, the shop, the field, the shared driveway and parking.

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: March 17, 2022

Residential Tenancy Branch