Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, FFT

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 (the "**Notice**") pursuant to section 49;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant (DM^1) attended the hearing with her daughter (DM^2) as her representative. Her daughter is also a tenant in the house, renting the upstairs. The landlord (DM^3) attended the hearing with his woman friend (JM) as his representative. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant DM^2 testified she served that the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on October 18, 2021. Tenant DM^2 provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The registered letter was returned to the tenant with "unknown address".

Landlord DM^3 explained that when he was working, because he was away most of the month, JM took care of all of his rental issues. JM used her business address because DM^3 did not have a permanent address. His mailing address was always the tenants' address. For some reason the mail, sent to JM's work address by the tenants, was returned.

Landlord DM^3 told the tenants that he would come and pick up the package, and to please leave it in the mailbox, but the tenants refused to give him the evidence package. The text message dated December 6, 2021, confirms this information.

Tenant DM^2 stated that she called the Residential Tenancy Branch and was told to "keep it" as she had done what was required. She interpreted this to mean that she did

not have to turn over the evidence package to the landlord, even if he requested the package delivered to a different address or if he agreed to pick it up.

Landlord DM[3] waived his right to review the evidence package. He just wanted the hearing to proceed, and the issued resolved. I find that the landlord was not served the Notice of Dispute or evidence package as required by the *Act*.

Landlord DM[3] stated that he served the tenants with copies of his evidence by email and also hand delivered them on February 6, 2022. The tenants confirmed receipt of the package. I find the tenants served in accordance with sections 88, 89, and 90 of the Act.

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*.

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.

Preliminary Issue #1: Tenants' Application

In addition to the application to cancel the Two Month Notice, the tenant applied to restrict the landlord's access to the rental unit. Pursuant to rule 2.3 of the Rules, 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 general scheduled for one-hour and rule 2.3 is intended to ensure that we can address disputes in a timely and efficient manner.

Upon review of the tenant's application, I find that the primary issue is whether the tenancy will continue or end pursuant to the Two Months' Notice to end tenancy that is subject to the application. The additional relief is only relevant to the extent that the tenancy continues.

Accordingly, pursuant to rule 2. 3 of the Rules, I dismiss the tenant's following claim:

- an order restricting the Landlord's right to enter is suspended or restricted pursuant to section 70;

The hearing proceeded on the issue tied to the Notice to End Tenancy signed September 27, 2021.

Issues to be Decided

Is the tenant entitled to:

1) an order cancelling the Notice;
2) recover the filing fee?

If the tenant fails in her application, is the landlord 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 a written fixed term tenancy agreement starting September 1, 2018. Monthly rent is $800.00, payable on the first of each month. The tenant paid the landlords a security deposit of $400.00. The landlords still retain this deposit.

On September 27, 2021, the landlord issued DM[1] a Two Months' Notice to End Tenancy for Landlord's Use of Property; the end of tenancy date, December 1, 2021. The Notice was served to the tenant in person.

The tenants testified that in September 2018, the tenants DM[1] and DM[2] rented the whole house from the landlord. DM[1] rented the "in-law suite" downstairs. DM[2] rented the upstairs. The tenants stated when they rented the residential home, they told the landlord that they "were moving in as a unit and would leave as a unit". The landlord told them that he may want to sell the property at some point but would give them ample notice. DM[1] and DM[2] signed two separate tenancy agreements

In the summer of 2021, the landlord told the tenants that he spoke to his financial advisor who told him it was more beneficial for him to keep the house. He was not planning to sell and asked the tenants if they were willing to stay on as tenants.

On September 25, 2021, the landlord sent a text message to the tenants stating that he wanted to speak with both of them. He also told them that he needed to replace the fascia boards and do some yard maintenance. DM[2] asked the landlord to be mindful of her work schedule when doing the repairs as she works 16 hour shifts as an RN. The tenant stated that the landlord became upset and irritated. He told her the work had to be done. He was now unemployed, too sick to work and that he and JM broke up.

On September 27, 2021, Landlord DM[3] arrived at the house around 9:30 with another man. DM[1] told the landlord to leave because DM[2] was sleeping after working a 16-hour

shift. DM[1] said that if they did not leave, she would call the police. The landlord and the man left. Late that afternoon, JM served a notice for a rental increase to the upstairs tenant, the Two Months' Notice to the downstairs tenant, and a letter advising the tenants that general maintenance would take place daily from September 27 through October 7, 2021.

Tenant DM[2] states she and her mom are suspicious of the timing of the Notice since it came on the heels of DM[1]threatening to phone the police. It was also served with a rent increase and notice that the landlord would be accessing the common areas on the property.

DM[2] stated after the notice was issued the landlord embarked on "relentless contact" either in person, by text or by email between September 17,2021 through December 6, 2021 just over a 2-month period. DM[2] writes, "I recorded approximately 35 events". DM[2] states this behavior was harassment, intended to force them to leave the rental units so the landlord would not have to provide one-month free rent. She asserts that the 'unpredictable visits escalated following the notice to vacate'.

DM[2] cites numerous work projects the landlord undertook over the months including roof repairs, Shaw cable rewiring, removal of Christmas lights, fascia replacement, various yard work. She states this all took place with little consideration of her work schedule. Again, DM[2] stated the "access was constant and unreasonable" in a concerted effort to force her and her mother to leave.

DM[2] states that the landlord boarded up access to the garage that the tenants had access to since the start of their tenancy. She still has goods in the garage. She further testified that she asked the landlord several times over the years to remove his belongings out of the garage, but he did not do so.

DM[2] also stated that for the three (3) years prior to the Notice, DM[1]had an arrangement with the landlord whereby she would collect his mail and either place it in the garage or sometimes place it in the mailbox in a grocery bag. DM[1] contacted the RTB, who suggested she take the mail to the post office and said that the landlord should have changed his mailing address three (3) years ago.

The tenants allege the landlord is not acting in good faith. She believe the landlord wants both DM[1] and DM[2] to leave so that he can sell the property. DM[2] argues that JM and DM[3] are a couple and have lived together for 3.5 years. She allege that the landlord is not "homeless" and "sleeping in his van" as he told them. He and JM did not break up – they are as much of a couple now as they have always been and continue to live together.

Landlord DM[3] testified up until the middle of July 2021, he worked full time as a long-haul truck driver. As a long-haul truck driver, he was only home 7-9 days per month. On the days he was in town, he either stayed with JM or in the cab of his truck.

In mid-July 2021, his circumstances changed. Landlord DM[3] stated that he was unable to continue working. The long driving hours and prolonged sitting took its toll on his health and so he retired from driving. Since he retired, he lives part-time in his truck – not his van- and part-time with JM. JM does own a home. She rents out the top floor and lives in the basement. It soon became clear that two adults living in a 560 square foot basement suite wasn't working and he needed his own space. There is a big difference between living with someone a few days per month and living with that person full time.

Landlord DM[3] priced basement rental units in the local area. The basement suites were renting for around $1500.00 per month. Landlord DM[3] stated that it made no sense for him to pay $1500.00 in rent per month, when he could live in the suite he rented out for $800.00. No longer working, "I can't afford to rent for more money than I'm getting. This was why the Two Months' Notice was issued." Landlord DM[3] stated he does not need a large personal space but does need his own personal space. He has no intention to sell the property. As he told the tenants in the summer, he spoke with his financial advisor who told him to hold onto the property for another 2-3 years.

JM submitted that she and DM[3] are not now nor ever have been engaged in a harassment campaign against the tenants. Since Landlord DM[3] is no longer working, Landlord DM[3] decided to do some necessary repairs to the house. The repairs not only benefit the landlord by maintaining the property, but also benefit the tenants.

JM stated that she and DM[3] provided the tenants notice that they would be making repairs to the property- repairs that needed to be completed before winter. Over the course of the months, the landlord only accessed common areas or his garage. He replaced the roof, that he had patched the previous February because of a leak, replaced fascia boards, trimmed trees that were impinging on the wiring to the house, landscaped the front yard, removed and replaced the deck cover, and also purchased a replacement patio umbrella for the tenants.

The tenancy agreement between the parties never included the garage. Landlord DM[3] has always used the garage for personal storage of tools, two motorbikes, and equipment etc. JM referred to the "Craigslist" listing uploaded to the file that specifically stated that the garage was not included in the rental agreement. In 2018, Landlord DM[3] permitted the tenants to use the garage to temporarily store belongings when they moved in. When after a month or so, the belongings were still in the garage, the tenants asked the landlord for storage, so the landlord cleared out one of the two storage sheds in the backyard for their use.

In July 2019, the landlord noticed some goods stored in his garage. The goods belonged to the tenant's older daughter's belongings in the garage, who was traveling overseas. The tenants told him it was a temporary measure and never asked his permission before storing the goods.

Later DM2's daughter moved into the rental unit and did not seek permission from the landlord or ask his permission to use the utility room as a spare bedroom. When Landlord DM3 asked about the bed in the utility room, he was told again that this was a temporary measure and took "no action as DM2 is simply helping out her daughter as would we for our children".

Landlord DM3 states the utility room houses the electrical panel and is part of the common area, not under the exclusive possession of the tenants. Landlord DM3 confirms that he stored some "personal stuff" in the utility room. It was belongings that he intends to move into the suite.

JM states that neither she nor Landlord DM3 ever accessed the tenants' personal suites without express permission and as required by law.

JM confirmed that there were numerous text messages sent to the tenants between September 27, 2021 and December 2021, as entered into evidence. She testified that these messages varied in content from advising when Shaw cable was arriving to assess the need for outside wiring reattachment. Re-wiring was required because of the installation of the new facia boards that were installed during re-roofing. One text included a request that the driveway to be clear for power washing purposes, when the tenants did not move their vehicles or respond a follow up text was sent and a new date for power washing provided. JM stated these text messages were to keep the tenants apprised of the repairs and when service providers were attending the property. The text messages were not in any way harassment or intimidation. JM pointed out the tenants refused to respond to the text messages.

JM stated that the landlord tenant relationship was good prior to the Two Month Notice. She states DM3 was responsive to the tenants' requests allowing the tenants to have cats as pets, a rabbit housed out of doors despite the "no pet clause" in the rental agreement. The tenants request a pool and the landlord paid for and fenced the backyard in compliance with bylaws to accommodate the request. When the hot water tank needed replacement, DM3 responded immediately.

JM concluded by pointing out that if DM3 did not intend to occupy the residence, given that DM2 lives directly above, DM2 would be well aware if DM3 was not living below. She also stated just because people are a "couple" does not mean they have to live together. As a couple they both like to have their personal space

Analysis

The *Act* s. 32 provides the landlord and tenants obligations to repair and maintain the property.

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice "if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit".

Both parties were aware that the landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. In other words, s. 49(3) is a two-part test. The landlord must show:

1) s/he truly intends to personally use or occupy the rental unit for him/herself;
2) s/he has shown that s/he does not have an ulterior motive for seeking to have the tenant vacate the rental unit.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord gives a statement of the policy intent of the legislation based on the court ruling in *Gichuru*[1] that illustrates the concept of one's honest intention. This court ruling is binding. In sum, the court looked at whether bad faith on the part of the landlord was the motivation driving the Notice to end tenancy; and if the suspicious actions of the landlord were intended to make the tenant move.

The key points as set forth in the Policy Guideline are:

> When the issue of a dishonest motive or purpose for end of tenancy is raised, the onus is on the landlord to establish they are acting in good faith.
>
> 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

[1] *Gichuru v. Palmar Properties Ltd.,* 2011 BCSC 827, cited in the *Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupant by Landlord, Purchaser or Close Family Member.*

> deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the *[Act]* or the tenancy agreement.
>
> …..
>
> 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 ulterior motive.

The *Act* s. 51 sets out tenant compensation if the landlord fails to use the property as stated in the Two Month Notice. I refer specifically to 51(2)

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
>
> (b) the rental unit, except in respect of the purpose specified in section 49 (6)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find as fact, to support my conclusion that the landlord had a good faith intention to use the rental unit for the purpose stated in the Two Month Notice:

The tenants testified that the landlord has no intention of occupying the suite and it is simply being used as leverage to force them out. The “proof” offered by the tenants is that Landlord DM[3] and JM are a couple who have lived together for 3.5 years.

I note, by the tenants’ own testimony, the landlord continued to have his mail delivered to the tenants’ rental unit for 3.5 years. This strongly supports that the landlord had no other permanent, fixed address. This is further supported by the fact that the landlord used JM’s business address on the Two-Month Notice again giving weight to his testimony that he does not have a permanent residence.

I give significant persuasive weight to the landlord’s testimony that did not waiver from his intention to occupy the unit as his personal residence. The landlord testified that when he retired from long-haul truck driving for health reasons in mid-July 2021, his circumstances changed. When he was on the road for most of the month and home only for a few days interspersed throughout the month, sleeping in the sleeper cab of

his truck and sometimes staying with JM worked. JM's basement suite is small and although they are a couple, they both need their personal space. He stated he does not need a large space, just enough space. The basement suite meets his needs.

I find this a simple statement of the landlord's intention to occupy the rental unit, within the boundaries of the law.

I assign significant persuasive weight to the landlord's evidence that he investigated options before issuing the Two Months Notice. He considered renting a basement suite in the area and looked for rental units. The landlord was candid about rents in the area. He testified that basement suites in the local area were renting for more than he was collecting in rent. From the landlord's perspective it made no financial sense for him to rent out his basement suite, which could meet his personal space needs, for $800.00 per month and pay $1500.00 in rent to someone else especially since he was retired and no longer had his employment income.

I have considered the tenants' argument that the landlord served notice to DM[1] because it was the cheaper of two options. DM[2] argued that the one-month free rent for DM[1] at $800.00 was significantly less than one month free at her rent.

I find this argument flawed. The landlord is well aware of the consequences imposed by the *Act* s. 51 if a landlord does not accomplish the stated purpose on the Notice within a reasonable time or use the unit for that purpose for at least six (6) months. This includes not moving into the rental unit within a reasonable period of time or putting the property up for sale and selling the property in that six (6) month window.

Under s. 51(2) a landlord must pay compensation equal to 12 times the amount of rent. Thus, even if DM[2] gave notice and moved in concert with DM[1], if the tenants subsequently learned the landlord did not use the basement rental unit as indicated on the Two Month, the landlord could face a significant penalty of rent x 12 months -not an insubstantial amount.

Despite the mutually acknowledged acrimonious relationship, the landlord chose not to issue notices to end the tenancy for other reasons, such as cause. If a notice for cause is successful, the landlord would have no obligation to provide one-month free rent to either tenant or pay compensation as noted above. I give significant persuasive weight to this fact.

The tenants state that the landlord embarked on "relentless contact either in person, by text or by email between September 17,2021 to December 6, 2021, which is just over a 2-month period, I recorded approximately 35 events". Tenant DM[2] pointed to email/text chains submitted into evidence.

The landlord submitted into evidence the chain of text messages sent to the tenants and the tenant similarly uploaded text messages. I have read the text messages. The text messages attempt to provide the tenants with information about the repairs being undertaken, ascertain dates and times that worked with the tenant's shift schedule, and/ or provide information about work being done on the perimeter of the property, i.e., removing Christmas lights, installing fascia, power washing the driveway etc.… The photos submitted into evidence by the tenants show the landlord and JM doing work on the property.

Tenant DM[2] own evidence supports this. She writes on November 2/21……JM texted me at 5:40 PM: "DM[3] will be work on the siding of your deck area next. Can you advise the dates of your days off over the next month pls."

Tenant DM[2] responds, "My schedules fluctuates currently. I am off the rest of this week " then states " DM[3] never did come to do the siding."

DM[2] provided a limited window for the landlord to do the repairs stating that she was "off the rest of this week" and stated, "her schedule fluctuates currently". Tenant DM[2] then pointed out Landlord DM[3] never came to do the siding that week. There may have been any number of reasons the landlord was unable to do the siding that week and DM[2] did not provide the landlord with alternative dates.

While I am fully appreciative of the challenges of shift work and the stresses on health care workers, municipal bylaws limit the times and days construction can be undertaken. The email suggests that the landlord tried to take into consideration Tenant DM[2]'s shift work and was met with a terse response. I also note Tenant DM[2] referenced a letter sent to her and her mother on September 27. The final paragraph reads:

> I do/did not wish for any of this to become confrontational and having threats of calling the police on me for accessing my property for maintenance is not acceptable. I know [DM[2]] you sleep in the day but in the 3 years you have been my tenant I have worked within your needs when possible. This time it is not possible. Contracted companies will not take on a job that requires them to start after 3 pm. They work 7-3 pm daily to get the job done within bylaw requirements.

Landlord DM[3] response is reasonable and appropriate given the outlined facts about or related to service providers.

In another text exchange (undisclosed date) referenced by the DM[2], JM stated that the landlord would drop off a dishwasher, install it, and "do the stove swap".

Tenant DM[2] responds, "Can I ask why the replacement is contingent on his moving in? It has been over a month already since they have needed repair."

JM responds, “Yes, you can ask…the police officer you called on [DM3] and our lawyer advised because you have filed a Notice of Resolution it is best not to be on the property until after the arbitration ruling. We are heeding their recommendation. Estimates for repair was ridiculous as [DM3] can fix the stove, which he will do when he is in the suite. You are welcome to have someone swap out the stove for you.”

The tenant replies, “I’m not going to switch the stove and give my mom a broken stove…….Furthermore, it is not my responsibility to replace appliances. You are telling me that it’s best that [DM3] not come on the property but at the same time you are telling me that you are both coming here tomorrow to come on the property.”

JM extended an offer to DM2 to change the dishwasher, move (and fix) the stove but the tenants refuse the landlord access, then states it is not her responsibility to replace appliances. JM then offers another option, “You are welcome to have someone swap out the stove.”

When asked about the ‘mixed messages’, JM explained that she and DM3 were heeding the advice of their lawyer and the police officer the tenants called on the landlord.

In sum, the tenant is calling out all of the actions of the landlord as contributing to, or causing, conflict. I find this is to undermine the landlord’s motive in wanting to end the tenancy. All actions cannot be labelled as a dishonest motive. I find the landlord has met the burden to show these actions are not a sign of dishonest motive on his part.

There was other communication from the landlord to the tenant and tenant to landlord prior to the service of the Two-Month Notice in 2021 that showed civil if not congenial relationship between the parties. In the messaging leading up to the Two Month Notice, there is no evidence of language from the landlord threatening to end the tenancy.

I find based on the evidence provided that the landlord has not contributed to or initiated communication that can be interpreted as moves toward ending the tenancy for any reason other than his need for the rental unit. My finding here is based on a review of all records before me in this hearing and each party’s testimony.

The ongoing palpable tension between the parties is tenant driven. The tenants’ interpreted rental unit maintenance undertaken by the landlord, as required under s. 32 of the Act, as a “harassment campaign”. The tenants allege the intention of the multiple maintenance projects was to force the tenants to end the tenancy on their own by disrupting Tenant DM2’s sleep. This is speculation and the tenant provided insufficient evidence to support this claim. I find this less likely based on my assessment of the landlord’s communication. The landlord did attempt to ascertain the tenant’s work scheduled when it was possible for him to do so inquiring about her November 2021

shift schedule and also pointed out this is likely not possible with contractors or service providers.

The tenants argue the garage and utility room were part of the tenancy agreement. The landlord stated that the utility room houses the electrical panel and was always part of the common area. Tenant DM[1] 's tenancy agreement signed and dated July 23, 2018 by both parties states that parking and storage are not included. The landlord testified that the garage was not included as part of the tenancy agreement and provided a copy of the Craig's List listing.

I accept as fact; the garage did not form part of the tenancy agreement. The utility room was part of the common area and not part of the exclusive possession of the tenants.

The tenant called police to restrict the landlord's access to the property including his garage. Again, I find no evidence of the landlord responding to the call by retaliating or otherwise mentioning other reasons to end the tenancy, rather, the landlord chose to await the outcome of this arbitration.

I also considered the tenants argument that the Two Month Notice and rent increase notice was issued after Tenant DM[1] threatened to call the police. When issuing a new notice of rent increase, a landlord must:

- Use the approved notice of rent increase form
- Use the maximum amount for 2022: 1.5%
- Give the tenant no less than three full months before the notice takes effect. For example:
    - If rent is due on the fifteenth of each month, notice must be given before October 14, 20211 and the first increase rent payment will be due January 15, 2022.

The first rent increase permitted after the rent freeze was lifted was January1, 2022. The landlord was required by law to issue the notice of rent increase "no less than three full months before the notice takes effect". For the rent increase to be effective on January 1, 2022, the landlord must issue the notice before October 1, 2021, which he did.

I have considered the timing of the Two Month Notice. While the timing of the Two Mont Notice coincided with DM[1] threats to call the police, the landlord did not pursue other avenues available to end the tenancy, rather, he issued a Two Month Notice that gave the tenant one month rent free and time to secure another rental unit. While the timing was unfortunate, considering the evidence in aggregate, I am unable to conclude that the Two Month Notice was anything other than a statement of the firm conviction of the landlord for his need of that space for his personal use. I find this argument put

forward by the tenant is another facet of the of the tenants' suspicions of the landlord's "harassment campaign" that is not shown in evidence.

On this evidence, I find the landlord has shown that his actions, interpreted by the tenant as feeding conflict, were not even one factor in the decision to issue the Two Month Notice. Throughout the tenancy, the landlord has been accommodating and responsive to the needs of the tenants. They needed storage, he emptied out one of his sheds. The tenant's daughter needed a place to stay, he allowed it. They wanted a pet, he acquiesced. The tenants wanted a pool , the landlord provided the fencing at his own expense and checked into municipal bylaws on his own time. Based on the evidence before me, the tenants have failed to provide sufficient evidence of bad faith on the part of the landlord.

Based on the two considerations initially identified – where the landlord had a good faith intention, and no dishonest motive,- I find the landlord has proven on the balance of probabilities he issued the Two Month Notice for a valid reason. As per s. 49(3) of the Act, I find the landlord intends in good faith to occupy the rental unit.

The Act s. 55 provides that I must grant to the landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the tenant's application or uphold the Two Month Notice.

For the reasons above, I uphold the Two-Month Notice issued on September 27, 2021. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. The landlord explained the reason he used his partner's work address. When he worked, she took care of the rental property and since he retired, he does not have a permanent address. Given this finding, the landlord is entitled to an order of possession on the effective date.

The tenancy shall end with the service of the Order of Possession.

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

I issue the following orders:

1. I order the tenant DM[1] deliver full and vacant possession of the **basement** suite to the landlord effective two (2) days after being served with a copy of this decision and attached order.
2. I order the tenants to remove all personal items from the common area described as the utility room within two (2) days after receipt of this letter or at a future date agreed to by the parties.

3. If the landlord has **NOT** done so, I order the landlord to provide the equivalent of one month rent reimbursement in the amount of $800.00 to the tenant as per the requirement pursuant to the Act s.51(1).
4. I order that, with the exception of true emergency situations, the landlord 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.
5. I order the landlord provide the tenants access to the garage to remove all items they may have stored within two (2) days after receipt of this letter or at a future date agreed to by the parties.

As the tenant was not successful in her application, she is not entitled to recovery of the filing fee.

Conclusion

The tenant's application to cancel the Two-Month Notice is dismissed. The landlord's notice is upheld.

The tenant's application to restrict access to the rental unit is dismissed, without leave to reapply.

1. Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlords within two (2) days of being served with a copy of this decision and attached order(s) by the landlord.
2. I order the tenants remove their belongings from the common area described as the utility room within two (2) days after receipt of this letter or at a future date agreed to by the parties.
3. If the landlord has **NOT** done so, I order the landlord to provide the equivalent of one month rent reimbursement in the amount of $800.00 to the tenant as per the requirement pursuant to the Act s.51(1).
4. I order that, with the exception of true emergency situations, the landlord 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.
5. I order the landlord give garage access to the tenants to allow them to remove any of their belongings that remain stored in that location within two (2) days after receipt of this letter or at a future date agreed to by the parties.

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 21, 2022

Residential Tenancy Branch