# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Design Marque Property Management
and [tenant name suppressed to protect privacy]
**DECISION**

Dispute Codes: LAT, CNL, LRE, FFT

Introduction

The tenant disputes a *Two Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") under section 49(8) of the Act. The tenant also seeks relief under section 70 of the *Residential Tenancy Act* ("Act") to restrict the landlord's access to the rental unit and for an order permitting the tenant to change the locks of the rental unit. The tenant seeks to recover the cost of the application filing fee under section 72 of the Act.

Attending the hearing was the tenant, the landlord (the property management company's agent), the owner of the property, his lawyer, and an employee of the property management company who simply observed the proceedings.

Preliminary Issue 1: Service of Evidence

While issues of service of evidence were raised by both parties at a few points during the hearing, the parties nevertheless acknowledged serving their evidence and confirmed that they had received and reviewed the opposing parties' evidence. (It is noted that the tenant had not yet reviewed the landlord's response submissions to his submissions, but the substantive evidence was nevertheless in his possession.)

Notwithstanding the importance of the timely service of evidence under the Residential Tenancy Branch's *Rules of Procedure,* it is necessary to note that failure to strictly comply with the *Rules* will not in itself stop or nullify the proceeding, a step taken, or any decision or order made in the proceeding (see Rule 9.1).

Ultimately, a balance must be struck between strict adherence to the *Rules,* the timely and efficient resolution of disputes made under the Act, and the assurance that the rules of procedural fairness and natural justice are kept at the forefront of a dispute.

Preliminary Issue 2: Naming of Parties

It should be noted that the tenant's application included the names of two occupants. Given that occupants are not considered tenants for the purposes of the tenancy or for the purposes of the Act, it was my finding that those individuals ought to be removed from this application. The applicant tenant acknowledged his understanding with this. As such, the occupants' names have been removed from the application, and this is reflected on the style of cause of this decision.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to an order suspending or restricting the landlord's access to the rental unit and permitting the tenant to change the locks?
3. Is the tenant entitled to compensation for the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenant rented the property from 2013 to 2019. He then moved away for a couple of years. On April 15, 2020, the tenant began a new tenancy at the same property. A copy of this tenancy agreement was in evidence. Monthly rent is $8,627.50. The security deposit was $4,250.00 and the pet damage deposit was $4,250.00.

On December 1, 2021 (according to the tenant), the owner of the house (D.M.):

> threatened to evict us in retaliation for asking him to move his car that was blocking our driveway (which we have exclusive access to) for several hours. We documented the interaction on video. He also evicted the basement tenant in the same manner and has not been living in the unit which shows a pattern of behavior of using this tactic in bad faith.

The landlord did not dispute that there was a negative interaction between the parties on that cold and wet December night, but it was not quite the altercation as described by the tenant. The landlord is sorry that there was a disagreement, but he refutes the argument that the Notice was issued based on malice.

The tenant submitted several videos and a few photographs. One video, titled "[Landlord's full name]_Threatening_Eviction.mov" is worth describing. The video, which is about 36 seconds long, is taken by a third party (likely one of the occupants) from inside the rental unit and shows the tenant and the landlord interacting. The conversation runs as follows, and appears to have occurred shortly after the tenant told the landlord that his car would be towed if the landlord did not move it:

Landlord: [inaudible] You gonna tow my car? Seriously?
Tenant: Well you blocked me in, I have to take my kids to school, what am I supposed . . .
Landlord: Guess, guess what. You are gonna be fucking moving here shortly.
Tenant: If you are going to retaliate . . .
Landlord: What?
Tenant: You're going to retaliate because you blocked my driveway?
Landlord: I'm not blocking your driveway, I'm . . .
Tenant: You're retaliating because you blocked my driveway and saying you're going to kick me out.
Landlord: I'm not kicking you out.
Tenant: You just said I had to move here in a second. Those were your exact words.
Landlord: Well, well . . .
Tenant: That's retaliation. I'll take you to court.
Landlord: Really?
Tenant: Yeah.
Landlord: Now it's called, two month's notice.
Tenant: OK. You do what you have to do.

On January 24, 2022, the tenant was served with the Notice by registered mail. A copy of the Notice is in evidence and on page two it is indicated that the owner intends to occupy the rental unit. The effective end of tenancy date is indicated to be March 31, 2022.

It is the tenant's position that the landlord (that is, the owner) simply wants to evict the tenant in retaliation for the incident of December 1. There is, he argued, no good faith in respect of why the landlord issued the Notice. Conversely, it is the landlord's position that the owner (D.M.) had decided to "make a decision to move and decided to move full time to Vancouver and sell his property in Toronto."

In addition, the tenant argued that the landlord's second ulterior motive (other than the first motive stemming from the blocked driveway incident) was financial. The landlord offered the entire rental unit to the tenant for a higher rent. The tenant declined.

In respect of the application for orders under section 70 of the Act, the tenant testified that the landlord tried to open the door of the rental unit on the night of December 1, and that there have been several instances of the landlord lurking around the property and looking through the windows. The landlord denied these allegations and remarked that he respects the tenant's privacy.

Analysis

**1. Application to Cancel Notice**

The tenant was served with the Notice pursuant to section 49(3) of the Act, which states that a landlord may end a tenancy when, "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." In this dispute, the tenant disputes that the landlord issued the Notice in good faith.

"Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. And, to reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see also *Baumann v. Aarti Investments Ltd.,* 2018 BCSC 636). In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence.

In this case, the tenant submitted video evidence whereby, after the tenant asked the landlord to move his vehicle (and then said that he would have the car towed if it was not moved), the landlord remarks, "You are gonna be fucking moving here shortly." (Or, words to that effect.) The tenant refers to this threat as retaliation. The landlord a few seconds later that "Now it's called, two month's notice."

In short, I am persuaded, on a balance of probabilities, that the tenant has proven that the landlord has acted in bad faith in issuing the Notice. Notwithstanding that the incident on December 1, 2021 was a one-time occurrence, and aside from the landlord and property management company otherwise following the Act, the landlord's remarks are damning, and indicative of his intention to proceed with evicting the tenant under the guise of a Two Month Notice to End Tenancy for Landlord's Use of Property.

As such, it is my finding that there was an ulterior motive for the landlord having issued the Notice. Having considered this aspect of the tenant's application, I need not consider the second alleged motive regarding financial reasons for issuing the Notice. Accordingly, the Notice is hereby cancelled, and the tenancy shall continue until it is ended in accordance with the Act.

Last, it is worth noting that the tenant is required to pay rent pursuant to the tenancy agreement and section 26 of the Act. Tenants not permitted to hold rent payments in abeyance pending the outcome of a dispute resolution proceeding.

**2. Application for orders under section 70**

The tenant also seeks an order authorizing the tenant to change the locks to the rental unit, and, for an order suspending or restricting the landlord's right to enter the rental unit. These orders may be issued under section 70 of the Act, which states as follows:

> (1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 *[landlord's right to enter rental unit restricted]*.
>
> (2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may
>
> (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
> (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

In this dispute, while the landlord allegedly tried entering the rental unit, there is no evidence that persuades me that this was the case. I am not satisfied that the landlord is likely to enter the rental unit other than as authorized under section 29 of the Act.

However, the multiple videos submitted show the landlord wandering around the property. One of the videos appears to show the landlord arriving home (after having operated a motor vehicle, no less) and then staggering, stumbling, and at one point falling over, as he approached the property.

While the evidence is insufficient for me to make any orders under section 70 of the Act, the landlord (D.M.) is ordered to remain outside all portions of the rental unit property that is rented exclusively to the tenant. Should the landlord enter onto any such area of the property in the future then the tenant may file an application for dispute resolution claiming compensation for the loss of quiet enjoyment and exclusive possession under section 28 of the Act.

**3. Recovery of Application Filing Fee**

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. In this dispute, as the tenant was successful in respect of cancelling the Notice, the landlord is ordered to pay the tenant $100.00. The tenant may deduct this amount from a future rent payment in full satisfaction of this award.

Conclusion

**The *Two Month Notice to End Tenancy for Landlord's Use of Property,* dated January 15, 2022, is hereby ordered cancelled. The Notice is of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.**

The tenant's application for orders under section 70 of the Act is dismissed, and the tenant's application for recovery of the filing fee is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: April 26, 2022

Residential Tenancy Branch