



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, FFT**

Introduction

This hearing was convened by way of conference call in response to the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use dated December 24, 2021 ("2 Month Notice") pursuant to section 49;
- an order the Landlord comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The two Tenants ("AM" and "MM"), the Landlord, the Landlord's legal counsel ("WM") and the Landlord's property manager ("JB") attended the hearing. They were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

AM stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence ("NDRP Package") on the Landlord by registered mail on January 15, 2022. WM acknowledged the Landlord received the NDRP Package. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

WM stated the Landlord served her evidence on the Tenants by email. WM stated the Tenants agreed to service by email and AM acknowledged receipt of the Landlord's evidence. I find the Landlord's evidence was served on the Tenants in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Severance and Dismissal of Tenants' Claims

The Application includes a claim for an order for the Landlord to comply with the Act, Regulations and/or tenancy agreement. Rule 2.3 of the RoP states:

2.3 Related issues Claims made in the application must be related to each other.

Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner. Based on the above, I dismiss, with leave to reapply, the Tenants' claim for an order for the Landlord to comply with the Act, Regulations and/or tenancy agreement.

Issues to be Decided

- Are the Tenants entitled to an order to cancel the 2 Month Notice?
- Are the Tenants entitled to recover the filing fee of the Application from the Landlord?
- If the 2 Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

The parties agreed the tenancy commenced on December 1, 2018, on a month-to-month basis, with rent of \$1,395.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of \$697.50 by November 3, 2018. Pursuant to a Notice of Rent Increase, the rent increased to \$1,431.27 per month on June 1, 2020. WM stated the Tenants paid the security deposit and that she is holding the security deposit in trust for the Tenants.

WM stated the 2 Month Notice was served on the Tenants in-person by JD on December 24, 2021. AM acknowledged the Tenants received the 2 Month Notice. I find

the 2 Month Notice was served on the Tenants in accordance with the provisions of section 88 of the Act.

The Landlord stated the tenancy agreement dated November 2, 2018 was between her mother and the Tenants. The Landlord stated her parents moved to Victoria from Calgary around 1980 and her father passed away in 1989. The Landlord stated that after her father passed away she and her daughter regularly visited her mother in Victoria. The Landlord stated that her mother died in 2000 and that it was her mother's wish that the Landlord have use, and she became the owner, of the rental unit. The Landlord stated she currently lives in Washington State and has dual American and Canadian citizenship. The Landlord stated she is now retired and would like to have use of the rental unit so that she and her daughter can visit Victoria and stay in the rental unit.

JB stated he was retained by the Landlord to help manage the rental unit. JB stated he had extensive experience managing properties in Victoria and was familiar with the Act and Regulations. JB stated the landlord engaged him following the unexpected resignation of the previous property manager ("RH"). JB stated there was a flood in the rental unit that made it uninhabitable for a lengthy period of time. JB stated he was disappointed that RH did not inform the Landlord on the market rent available for the rental unit and that the tenancy could have been ended on the basis of frustration due to the flood. JB stated he was aware RH had a family member who has a business relationship with AM. As a result, JB stated he was suspicious that this relationship may have had something to do with why, in his opinion, RH did not act in the Landlord's best interests.

JB stated RH made no attempt to increase the rent the Tenants pay for the rental unit since the notice of rent increase issued by the Landlord on February 25, 2020. JB stated the Landlord was not familiar with the Act and Regulations and processes of the Residential Tenancy Branch and the options available to her. JB stated he printed out the rents of rentals in the area where the rental unit was located. JB stated the Landlord was flexible and gave JB the authority to negotiate a new fixed term lease. JB stated the Landlord never suggested she wanted the Tenants out of the rental unit.

JB stated he followed the Landlord's instructions and visited the Tenants on December 23 to ensure he could meet with them to discuss the tenancy before they left for vacation. JB stated that, as is his practice in sensitive situations, he made audio recordings of the two visits with the Tenants on December 23 and 24, 2021. JB stated that, following his meeting with the Tenants on December 23, 2021, he returned to

discuss the matter further with the Tenants on December 24 2021. JB stated the second meeting was unsuccessful and he served the 2 Month Notice on the Tenants. The two audio recordings made by JB on December 23, and 24, 2021 were submitted by the Landlord into evidence.

AM stated that, when JB came to their door on December 23, 2021, the Tenants had no idea of his credentials to act on behalf of the Landlord. He stated the Tenants felt the two meetings with JB were a “shakedown”. AM stated JB never presented a new tenancy agreement sign because JB stated he had not filled out one for signature yet. AM stated the Tenants had the impression the Landlord was seeking rent of \$2,500.00 per month based on JB’s statement that the rental in the area were renting for \$2,500.00 per month. AM testified JB stated RH was negligent in not getting market rent for the rental unit and the tenancy should have been ended when the rental unit became uninhabitable for a lengthy period as a result of the flood. The Tenants submitted a copy of the tenancy agreement dated November 2, 2018, signed by the Tenants and RH on behalf of the Landlord’s mother, that stated the month-to-month tenancy commenced on December 1, 2018. MM stated that the Landlord sent a “big bully” to the Tenants’ home in an attempt to renegotiate a new fixed-term lease. AM and MM submitted that the Landlord was not acting in good faith at the time she had BD serve the 2 Month Notice on them.

WM submitted the Tenants did not submit any evidence the Landlord was attempting to seek a rent increase. When I asked, the Landlord affirmed JB had the authority to negotiate a new tenancy for a fixed term and that he also had the authority to serve the Tenants with the 2 Month Notice. When I asked the Landlord whether she was going to live in the rental unit, the Landlord affirmed she would use the unit frequently and for several weeks at a time. The Landlord affirmed all of the information she provided in her written statement was true. The Landlord affirmed that she was acting in good faith when she instructed JB to serve the 2 Month Notice on the Tenants.

After the hearing, I listened to the two audio recordings of the meetings between JB and the Tenants on December 23, 2021 and between JB and AM on December 24, 2021. I have made an unofficial transcript the audio recording of the first meeting on December 23, 2021 as follows:

JB: [Knocking on door and then sound of door opening]
Hi Melody ... HI, I’m Jesse. I’m here to meet you and [first name of AM].

MM: Well [first name of AM] just went to the front lobby to ...Oh, okay, okay, maybe we'll ...
[AM shows up at Tenants' door]

JB: Hi [first name of AM].

AM: Hi.

JB: I'm [first name of JB], nice to meet you ...Hi.

AM: Hi, can I come in and we'll have a little chat here real quick if you don't mind ...Ready for holidays no doubt?

MM: Oh yeah, ready and ...

JB: Wow, I'll squeeze in there ...Do you have a place where we can sit down and have a chat real quick or something.

AM: OK, so what have you got, what are you here for?

JB: Well first, uh, I am here ah, I'm representing, ah, of course [name of Landlord].

AM: Yea.

JB: I'm Jesse, I used to manage these buildings. I used to work for [name of former employer] and so..

AM: Do you have a card?

JB: No, I'm actually retired now but ah ...

MM: Because she didn't give us a name the other day when [first name of AM] was talking to her.

JB: Oh yeah, right, right, well that's me, I'm [first name of JB] and uh.

AM: Do you have something with your name written on it so I can keep track ..

JB: Do you mean my license?

AM: Oh perfect, that would be great.

JB: [Full name of JB], okay, I'll remove my mask so you can check me out. I know [name of RH].
[Conversation continues]

MM: We were hoping [first name of Landlord] would send us ..

AM: Oh, from Ontario.

JB: I'm moving back here. I lived here ...I managed these buildings for 12 years until 3 years ago and then I retired and I went to Ontario, built a house and now I'm coming back. Anyways, and uhm, and I know [first name of "RH"], [name of another person], I know everybody and they all know me, you know, if you talk to [first name of RH], he knows me very well. [indiscernible word] for 12 years. JB provides further background on who he knows]. So, the

owner is... Thank you dear, thank you. I understand you guys are going on vacation shortly. You sure keep the place nice, wow.

MM: It's a lovely place here.

JB: Yah, it's a gorgeous suite in here. I know the suite very well...

MM: It wasn't [indiscernible speech] until we moved in...

JB: So [first name of Landlord] is, I mean the place is not [indiscernible] as you know, you being a realtor of course, *you know the rents are extremely high around here. Right? So [first name of Landlord] is considering moving back.*

AM: Oh good.

JB: Her and her daughter you know. *And we want to do everything proper, you know, 2 months... because like she's out a lot of money you know and I know you guys know [former agent], and um, [form agent] was negligent, quite frankly.*

MM: We only know [former agent] because he was manager here

JB: Oh, oh okay, but you know his son though [first name of RH's] son though, right? You guys work in the same place or something ...But ah, one of the problems, so I'm here, *I'm here to either, you know, give, give the Two Month Notice.*

MM and AM: Indiscernible talking

JB: Oh no! I haven't even filled it out yet, I haven't even filled it out, please don't get ahead of yourselves ...and I don't want to be intimidating or anything. You guys can ask me any questions.

AM: Okay.

JB: And you can even have the night to think about it if you want.

AM: So, so, you're here..

JB: *So, so, if you guys want to renegotiate a fixed term lease ..*

AM: No, no.

MM: Yea.

JB: *No, okay, so I'm going to speak to [first name of Landlord], there was, there was two ways of this I thought and we're going to go, probably the other way, you know. I can tell by your demeanour unfortunately that you're not happy at all, your not willing to renegotiate or anything.*

MM: You know what we're not happy about, initially is that we weren't even told she was coming to meet us at 4:00 o'clock..

JB: That doesn't matter, I represent her.

MM: Well no, it does matter to us because I don't like somebody being in my house and that's really important to me.

JB: Mm, Mm. Because *remember [indiscernible word] first of all, this agreement is not even signed by [first name of RH], no landlord has signed it. No one ..*

AM: You know what.

MM: That was a [first name of RH] thing.

AM: That was [first name of RH] thing, take that up with [first name of former agent].

JB: This is after yours though, this is your power, you know. So [first name RH] was the agent at the time.

MM: Of course.

JB: And he made [indiscernible words] and he made [indiscernible words] I manage, I worked for [Name of JB's former employer] and that is ludicrous, absolutely ludicrous, it should have been there, I know this very well and, if you would like, I could share any resources with you so you could check it out yourself, uhm, you know the Residential Tenancy Act, the website is extremely informative and I know, you know, all of the laws and you guys are entitled to, you know, of course, you know the laws, sure, you guys are in the biz. *But there is a frustrated tenancy thing that should have happened. If this place was uninhabitable for 3 months, 3 ½ months, which is unheard of,* and we had a huge fire over in [unit number for different unit in building], the entire place was gutted, the frustrated tenants, they moved out, everything was done. This unit here, about 8 years ago, they had a huge leak again and water damage. And all the units above, nobody vacated. That is ludicrous that you got 3 ½ months. Okay? Now ..

MM: Well, it was only...

JB: Excuse me, this is mine!

MM: Oh!

AM: Get out of my house.

MM: Sorry, you're going to have to, bye...

JB: Okay, Okay, absolutely dear.

AM: Fair enough, fair enough, times up!

MM: We're a little [indiscernible word] about that.

JB: Oh, I'm very sorry. I was trying to be as nice as possible. I'm very sorry. Okay?

MM: Well first of all, [first name of Landlord] didn't inform us ..

JB: *Well, she has been taken for a ride, this place is worth \$2,500.*

AM: Bye ... Bye, see yah ...

[Conversation ends]

[Emphasis added in italics]

I have made an unofficial transcript of the audio recording of the meeting between JB and AM on December 24, 2021 as follows:

[Door unlocks and opens]
JB: Hi [first name of AM], how are you doing?
AM: How are you doing?
JB: Good, good.
AM: Good, come on.
[Door closes]
AM: We'll reset, come on ... Let's go grab some ...
JB: Well, what about the move-in inspection?
AM: Well, we'll have to do that this afternoon ...
JB: We're not going to do the move-in inspection?
AM: I got the cheques for you though.
JB: Okay because one was never done for that unit.
AM: Oh yeah, it was, you just don't have it
JB: Okay. So [first name of RH] did do one?
AM: Yeah, of course.
[Indiscernible conversation]
I just thought it would be nice to talk to you out in the open. You know we got off to a bad start yesterday and, uhm, that's unfortunate.
JB: Mm mm, maybe we should go somewhere else to talk.
AM: OH, this is fine...so ah, you had some of our personal information. Where did you get that from?
JB: Like what, your name and address and what not?
AM: And that we were going on holidays and stuff like that.
JB: Yea.
AM: Yea.
JB: [First name of Landlord] told me. Because that', that's why I wanted to catch you before you went on holidays to get the rent cheques.
AM: She told me she wanted me to send them to her. To wire transfer them..

JB: That was before [first name of RH] and all that stuff went down, so...

AM: Yea, okay... yea, okay, I'm going to send you a copy of the move-in inspection... and you can just add to it that they put in new floors.

JB: Well, that's fine. It's mostly just to protect ... everything is new is new. We know that. Right. It's mostly to protect you of any damages that are existing. Right? I didn't look, but there are scratches on the cabinet and stuff like that, you know or whatever.

AM: Yah, well, you know, their original.

JB: Yah, yah

AM: They're all scratched.

JB: Yah, yah, for sure.

AM: So, I get that, uhm, now, are you actually licensed?

JB: No.

AM: You're not licensed?

JB: No.

AM: So, you ...

JB: You don't have to be licensed. I am an agent of the Landlord.

AM: I know that.

JB: Yah, for sure. When I worked for [name of previous employer], I was never licensed.

AM: No?

JB: And I worked for [another previous employer] for 10 years before then. You don't have to be licensed, no unless you want to become, working in an office, taking the property management course.

AM: Okay.

JB: Same as your realtor course you took that. There one for leasehold and strata and there one for Residential Tenancy Act.

AM: Because I'm bound by certain professional conduct [indiscernible word]. So, you bound by that?

JB: For sure, yah.

AM: OK. Um, let's see. Did you get a copy, do you have a management contract with the tenant.. with the Landlord?

JB: Uh, oh yah, that's none of your business. Yah. That's between me and my, you know, [first name of RH] never even had one and we have an email about that. And I work on handshake only. There is no written contract. When you didn't ask [first name of RH], you

didn't ask [first name of RH] for one when you first moved in you know.

AM: But, but [first name of RH] had the keys.

JB: And I already have your keys here for your suite. I don't have keys here. I don't need keys. There are masters that [name of third party] would have access to in the office down there. But I don't even have keys, I don't need keys you know.

AM: So, I am just trying to protect the Landlord here. To make sure that the cheques I'm going to give you today are going to her.

JB: Well, you know, you know she has been very explicit saying that [full name of JB], you know that's me, I've shown you my ID, I'll show you again.

AM: Yah.

JB: Is her agent, it's out of your hands whether I'm fraudulent or not. It's out of your hands.

AM: It's just as long as I know that you know that I know and as long as she knows that I know that she knows.

JB: Sure.

AM: I got the cheques and we'll go with that. So, local contact information? I don't have any local contact information.

JB: Well for sure, yah. Okay. My name is [first and last name of JB] of course and my phone number is [JB provides his phone number].

AM: Okay.

JB: Do you want my mailing address? It's just next door

AM: Yah, sure that would be great.

JB: Yah, [JB gives address].

AM: This is a personal question? You got a family?

JB: I do.

AM: You do.

JB: My son.

AM: Your doing Christmas time?

JB: Yes exactly, they're all there right now.

AM: You know, so you know?

JB: Yah, this is, I've been out of the game for three years and here I am again, Christmas Eve.

AM: Yah, okay. An email address?

JB: Yep, its [BD provides email address].

AM: Okay.

JB: I see your address and all that stuff when I looked up, you know, I know [name of third party] and [name of another third party] and [first name of RH] of course. So, I looked up and just like [surname of AM] and looked up everyone realtor thing and, I said, oh, okay, so they know each other and, you know, they probably have for years obviously, you know. They work in the same building.

AM: Well, well we're really, ah, quiet private people and it really unsettles us when people come and ..

BD: That's just open information on people on the internet, one second ...

AM: I know, I know.

BD: And, of course, you're a realtor so you advertise you know.

AM: Yah, but not my holidays.

BD: Yah, well it's open. You can't close your website down.

AM: Yah, but my holidays aren't on my website.

BD: Oh yah, right! But, well [first name of Landlord] said, because that was like otherwise I would have to wait until after the holidays but like [first name of Landlord] said no, they're going on holidays, please meet them before they go on holidays. I don't even know where you're going or anything you know. I'm on holidays right now.

AM: Okay, now, so I think that's pretty good. Ah, your driver's license. I took a picture of your driver's license just in case ...

BD: That fine.

AM: I didn't get the expiry date. Could you show me the expiry date. It blurred in the photograph.

BD: Yah, okay. ... What does it say there ...

AM: I can't see it either. It's small print on that side.

BD: [BD provides expiry date of driver's license].

AM: Okay. Right on.

BD: Okay. Any questions about that?

AM: So, I will send you a copy of the inspection, the move-in inspection we did with [first name of RH] and here's the cheque for [first name of Landlord].

BD: Okay, good, yep, awesome.

AM: And other than that, I guess we're neighbours.

BD: Well, okay, well so, there still something, we still don't have, she wants for her, because she filed for insurance, her insurance

company is asking for receipts for the accommodations and stuff like that.

AM: Well just get her to contact my insurance, her insurance company to give, to send me a letter and I will get my insurance company on it as well.

BD: Okay.

AM: Actually, I have a copy from them today cause it's still outstanding. And in fact, she still owes us money for hydro because the hydro bill was...

JB: Hey, you guys had 3 ½ months rent, that's ridiculous. That's never, that's unheard of.

AM: Well, you know what, then that, that is just...

JB: *That's just negligence on [first name of RH]'s part. It's just ridiculous. And even the renting, the rent before you was \$1,550.00 and so he rented to you guys for cheaper. But you guys all know each other, right? And I understand that you got to get a deal for a friend. But this is just, like, you know, it at that point where, at this point its almost fraudulent. It really is.*

AM: Oh cool. I like that. So, you are calling it fraudulent?

JB: Yes, because of all the nepotism, 3 ½ months rent and all that stuff. That's just ridiculous. *We don't even have a lease agreement for you guys. I tried to get one signed from you yesterday. We don't even have a proper lease agreement.*

AM: Cool, cool.

JB: It's not cool.

AM: And you know what? You're just digging a hole. Thanks [first name of JB]. Have a very merry Christmas.

JB: What about, whoa, whoa, what about the countertop?

AM: Ah

[Indiscernible conversation]

JB: I'm just going out the back door here. ... here, oh yes here, [first name of AM], here is, *it's from [first name of landlord], she is going to move back into the suite.*

AM: Okay.

JB: *So, there is your Two Month Notice. All the information is in there.*

AM: She knows that if she doesn't move back in, I'm going to be going after her?

JB: Exactly, one year's rent.

AM: Yeah.

JB: Absolutely. And don't worry, No ones going to be renting here, she's not renting, no one's going to live here, I'm not going to live here. She's going to be, she's moving in and, uh, so she wants to spend some time in Victoria and everything, so ...

AM: Good, good.

JB: So, if you have any questions?

AM: I don't. Thank you very much.

JB: Okay.

[End of conversation]

[Emphasis added in italics]

Analysis

Sections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1)(a) In this section:

[...]

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and

[...]

(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

[...]

- (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.
- (7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (8) A tenant may dispute
 - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
 - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

The Landlord stated the 2 Month Notice was served on the Tenants in person on December 24, 2021. Pursuant to section 49(8)(a) of the Act, the Tenants had 15 days to dispute the 2 Month Notice, or January 10, 2022, being the first business day after the expiry of the 15-day dispute period. The records of the Residential Tenancy Branch disclose the Tenants filed their application for dispute resolution to dispute the 2 Month Notice on January 5, 2022. I find the Tenants made their application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

Residential Tenancy Policy Guideline# 2A ("PG 2A") addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith and 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.

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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

[Emphasis in italics added]

The Landlord stated that JB had her full authority to negotiate a new fixed term tenancy with the Tenants or serve the Tenants with the 2 Month Notice. The Landlord stated she lives in Washington State and has dual US and Canadian citizenship. The Landlord stated she was now retired and she intended to visit Victoria frequently with her daughter and use the rental unit for her own use for several weeks at a time. The Landlord stated she intended, in good faith, to occupy the rental unit when she instructed JB to serve the Tenants with the 2 Month Notice.

During his oral testimony, JB stated he was disappointed RH did not inform the Landlord on the market rent available for the rental unit and that the tenancy could have been ended on the basis of frustration as a result of the flood that occurred in the rental unit. JB stated he was suspicious that the purported relationship between the Tenants and the son of RH and, in his opinion, RH did not act in the best interests of the Landlord. JB stated there was no attempt to increase the rent after the rent increase served on February 25, 2020. JB stated he printed out the rental rates for other units in the area in which the rental unit was located.

A transcription of the two audio recordings, made by JB without the knowledge of the Tenants, appear above. I have transcribed the entirety of those two recordings so the sub-context of the discussions and the subtle nuances are more easily detected. Furthermore, the recordings reveal the implicit threat being made by JB to the Tenants, namely, if the Tenants didn't sign a new lease at a higher rent, then the tenancy would be ended with a Two Month Notice. In the recording of December 23, 2021, JB initially advises the Tenants they can negotiate a new fixed term lease. The Tenants made it clear that they are not signing a new tenancy agreement. Then JB intimates, in my opinion, that the existing tenancy is in some way illegitimate. I reach this conclusion, firstly from JB's comment that there is no

signed tenancy agreement with the Landlord (which was untrue) and, secondly, from JB's comment that the tenancy should have ended on the basis of frustration because the rental unit was uninhabitable for 3 to 3 ½ months. JB then stated the Landlord was being "taken for a ride" and later stated the rental unit was worth \$2,500.00.

In the second recording between JB and AM from December 24, 2021, JB states that RH was negligent and that it was ridiculous that the Tenants were paying less than the previous tenants of the rental unit paid. JB stated that RH "had to get a deal for a friend" but "it is at that point where, at this point its almost fraudulent". At the end of this meeting, JB served the 2 Month Notice.

I found the testimony of the Tenants to be honest, credible and was fully corroborated by the two recordings made by JB. On the other hand, I found the testimony of the Landlord and JB to be disingenuous. I find that JB attempted to intimate the existing tenancy was illegitimate. JB explicitly referenced the market rent for other rentals in the area were "extremely high" and that the Landlord was "out a lot of money" and the Landlord was "considering" moving into the rental unit. The implicit message to the Tenants was the Landlord wanted more rent and that the Landlord was offering the Tenants the opportunity to renegotiate a new fixed term lease. I also find that JB's implicit message to the Tenants was that, in order for the Landlord to be agreeable to a new fixed term tenancy, the rent negotiated with the Tenants would need to be much higher than what they were currently paying. Otherwise, there is no explanation for JB stating, during his oral testimony, that he looked up the market rents for other units in the vicinity of the rental unit and then he told the Tenants during their meeting of December 23, 2021, that the market rent was \$2,500.00. Lastly, it was clear during the meeting of December 23, 2021 that, if the Tenants did not agree to signing a new fixed term lease, then they would be served with a Two Month Notice for End Tenancy. Rather than supporting the Landlord's position that she was acting in good faith when the 2 Month Notice was served, I find the Landlord's primary motive for ending the tenancy was the Tenants refusal to enter into a new fixed term lease at a significantly higher rent.

As stated in *Gichuru*, good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. I find the audio recordings of the two meetings provides convincing evidence the primary intent of the Landlord was to seek a new fixed term tenancy with the Tenants at a significantly higher rent. I find the Landlord had a dishonest motive for ending the tenancy. Based on the above, I find the Landlord has not established, as

required by section 49(3) of the Act, that she was acting in good at the time the 2 Month Notice was served on the Tenants. As such, I order the 2 Month Notice cancelled and the tenancy is to continue until ended in accordance with the provisions of the Act.

As the Tenants have been successful in the Application, I grant the Tenants recovery of their filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenants are allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenants.

Conclusion

I allow the Application to cancel the 2 Month Notice. The 2 Month Notice is of no force or effect, and the tenancy is to continue until ended in accordance with the Act.

The Tenants are ordered to deduct \$100.00 from next month's rent in satisfaction of their monetary award for recovery of the filing fee of the Application.

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: April 26, 2022

Residential Tenancy Branch