Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL, PSF, LRE, FFT / CNR, OLC, LRE, RP, MNDCT, PSF, FFT

Introduction

This hearing dealt with two of tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**10 Day Notice**") pursuant to section 46;
- the cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Two Month Notice**") pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order that the landlord provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $1,098 pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlord attended the hearing. Three of the four tenants attended the hearing. The tenants are all members of the same immediate family. They all have the same initials. Ordinarily in decisions, I refer to parties by their initials. I cannot do this for this decision. During the hearing the father of the family made the bulk of the submissions on behalf of the tenants. For simplicities' sake, I will refer to him as the "tenant". I will refer to the other tenants with reference to their relation to him. The tenant's daughter and the tenant's son attended the hearing as well.

All attendees were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that he tenants served the landlord with the notices of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenants with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Severance

These applications were allotted one hour to be heard. At the outset of the hearing, I advised the parties that I did not believe that this would be sufficient time to address all of the issues brought by the tenants. I advised them that I would deal with the most pressing issues only, that of the notices to end tenancy.

Residential Tenancy Branch (the "**RTB**") Rule of Procedure 2.3 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.

As such, I dismiss all parts of the tenants' applications except for their applications to cancel the 10 Day and Two Month Notices and to recover the filing fees, with leave to reapply.

Issues to be Decided

Are the tenants entitled to:

1) an order cancelling the 10 Day Notice;
2) an order cancelling the Two Month Notice;
3) recover the filing fee of both applications?

If not, is the landlord entitled to 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 tenancy agreement starting September 15, 2019. Monthly rent is $2,600 and is payable on the fifteenth day of each month. The tenants paid the landlord a security deposit of $1,300, which the landlord continues to hold in trust for the tenants. The tenants also provided a $120 refundable deposit for fobs to access the garage.

The rental unit has four bedrooms and is located on the main level of a single detached house. The landlord lives in a unit on the lower level which has two bathrooms.

The tenancy agreement states that monthly rent does not include water, sewer, garbage collection, electricity, heat cablevision, or internet. It includes parking for one vehicle. The tenancy agreement has an addendum which states:

The tenant agreed to pay 60% of the utility bills.

A two-car garage is attached to the rental unit. The parties agree that from the start of the tenancy until late 2021 the tenants parked one vehicle in the garage and the landlord used the other half of the garage for storage. The tenant testified that, in October 2021, the landlord purchased a new car and asked if he could use the tenants' half of the garage to do some work on it. The tenants agreed. Subsequently, the landlord took the position that he should be able to have total possession of the garage and refused to allow the tenants to resume usage of it.

The tenant testified that this became a point of contention between the parties. On December 17, 2021, he testified that he and the landlord had a confrontation, and that the landlord tried to bully him into giving up the garage. He testified that he told the landlord that he would need something in writing to consider. He testified that the landlord then went to his car and took out the Two Month Notice and gave it to him.

A copy of the Two Month notice was submitted into evidence. The first page was filled out, but the second page was not. It was dated December 15, 2021. The landlord did not dispute the tenant's assertion that he gave it to the tenant on December 17, 2021 however.

The tenants disputed the Two Month Notice on December 22, 2021.

The landlord testified that he issued the Two Month Notice because he wants to move into the rental unit with his parents. He testified that the lower unit is not big enough for the three of them. He testified that his parents are elderly (in their 80s) and that they need his help caring for them. He stated that the building they live in is slated for demolition so there is urgency to get them out of the building. I asked him when parent's building is going to be demolished. He was evasive in answering my question. He simply stated that it was not suitable for them to live there anymore and that they needed to move in with him. The landlord did not provide any documentary evidence supporting this testimony (such as a letter from his parents, information about their medical condition, or information about their current living accommodation's condition or when it is to be demolished).

The tenant testified that he did not pay rent for the period of February 15 to March 15, 2022 ("**February Rent**"). He testified that he understood that he was entitled to withhold one month's rent, as he was served with a Two Month Notice. He testified that he had purchased a house that he and the other tenants would be moving into. The possession date for the sale is June 1, 2022. He testified that on February 15, 2022, he was not sure when the closing date would be, and that it might have been sooner, which was why the tenants withheld rent on February 15, 2022.

On February 16, 2022, the landlord served the tenant with the 10 Day Notice. It specified that the tenants had failed to pay rent of $2,600 on February 15, 2022. It also stated that the tenants failed to pay utilities of $528 which were due following a written demand on January 26, 2022. The landlord entered a copy of this written demand into evidence. It stated:

> Unpaid utilities $528
>
> Unpaid rent of $2600 was due February 15, 2022
>
> Gas bill: $447
>
> Hydro bill: $433
>
> Total: $880
>
> You pay 60% of $528 utilities bill

I note that, on its face, this letter could not have been sent on January 26, 2022, as it refers to unpaid rent due on February 15, 2022.

The tenant argued that the landlord had improperly charged him for water and waste removal fees levied by the municipality four years prior, in the amount of $1,098. On January 12, 2022 he sent a formal demand letter to the landlord seeking repayment of this amount. At the hearing he testified that he spoke with an information officer from the residential tenancy branch who advised him that water and waste removal were not “utilities”. As such he does not believe he should have had to pay 60% of those amounts in prior years. He argued that he was only responsible for paying 60% of the hydro and gas bills. He stated that his overpayment should be offset against any amount that was owing at the time the 10 Day Notice was issued.

The landlord disagreed with this interpretation at the tenancy agreement. He stated that the tenancy agreement clearly indicated that water and garbage removal was not included in the monthly rent. He stated that the addendum set out the tenants’ responsibility to pay for 60% of all utilities, and that water and garbage removal are included in this. He provided the bills he received for water and garbage removal from the municipality. These documents are titled “Utility Bill – Annual”.

The landlord testified that since issuing the 10 Day Notice, the tenants have not paid any of their hydro or gas bills and currently owe $1,653 for these utilities.

On February 10, 2022 the landlord served an “amended” two month notice to end tenancy, which contained a completed second page. This page indicated that the landlord's parents would be occupying the rental unit. The tenants did not dispute this notice, as they had already disputed the original Two Months Notice.

Analysis

1. "Amended" Two Month Notice

The Act does not permit a party to "amend" a notice to end tenancy. A landlord is, however, permitted to issue a new notice to end tenancy correcting any errors or deficiencies in a previous notice. I understand the "amended" two month notice to be a new notice (hereinafter referred to as the "**Second Two Month Notice**"). However, in light of the fact the landlord labeled it an "amended" notice and that the tenants had disputed a prior Two Month Notice which had a hearing pending, I will consider the tenant to have disputed the Second Two Month Notice, and not deem them to have accepted that the tenancy has ended on its effective date.

2. Validity of the Two Month Notices

Section 52 of the Act requires that a notice to end tenancy, when given by a landlord, be in the approved form. Implicit in this is that the form be filled out correctly. The landlord did not complete the second page of the form. The information that he was supposed to include on this page sets out the reason for why he issued the Two Month Notice. As it was left blank, the tenants were not notified of the reason the tenancy was ending. As such, I find that the Two Month Notice is invalid and of no force or effect.

However, the Second Two Month Notice had the second page completed. As such, we must examine its merits.

Section 49(3) of the Act states:

> (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.

RTB Policy Guideline 2A states:

> B. GOOD FAITH
> 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.

As the landlord bears the onus to prove he was acting in good faith, he must establish it is more like than not that his parents are going to be move into the rental unit (among other things). The landlord has not provided any documentary evidence to corroborate

his claim that his parents are going to move into the rental unit once the tenants leave. Such evidence (statement from his parents, documents showing their need for additional care, or documents relating to the condition of their current building, for example) should have been relatively simple to provide.

As stated above, I found the landlord evasive in answering my questions about the status of the building his parents are currently living in. The landlord's failure to provide a clear answer as to when the building is slated for demolition, coupled with the lack of documentary evidence corroborating the landlord's claim, caused me to doubt whether it is slated for demolition at all. As such, I find that the landlord has failed to prove it is more likely than not that his parents intend in good faith to move into the rental unit. Therefore, I order the Second Two Month Notice cancelled and of no force or effect.

3. 10 Day Notice

    a. February Rent

The tenant argued that the tenants were entitled to withhold rent that was due on February 15, 2022, as they were served with a Two Month Notice, and therefore permitted to do so by the Act.

Sections 51(1) and (1.1) of the Act state:

> **Tenant's compensation: section 49 notice**
> 51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
>
> (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

As the tenants received a Two Month Notice, they were entitled to receive an amount equal to one month's rent pursuant to section 51(1) of the Act. However, they were not permitted to withhold February Rent, as that month was not their last month in the rental unit. Accordingly, section 51(1.1) does not apply. As I have cancelled both Two Month Notices, they are no longer entitled to compensation under section 51(1) of the Act.

Section 26(1) of the Act requires that tenants pay rent when it is due. They did not do this. As such, this part of the 10 Day Notice was issued for valid reasons.

    b. Utilities

Section 46(6) of the Act states:

Landlord's notice: non-payment of rent
(6)If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

There is nothing in evidence to suggest that the landlord made a written demand for payment of utilities more than 30 days prior to issuing the 10 Day Notice. The letter entered into evidence which sets out how the amount of unpaid utilities is calculated does not satisfy this requirement, as I find it was written after the 10 Day notice was issued (as it references the tenants' non-payment of February Rent).

As such, I find that it was improper to include an amount for unpaid utilities on the 10 Day Notice. This portion of the 10 Day Notice is not valid.

As the 10 Day Notice was issued for partly valid reasons, I will uphold it and dismiss the tenants' application to cancel it. I note that in order for a 10 day notice to be cancelled, all reasons listed on it for ending the tenancy must be invalid. A 10 day notice will not be invalid if only one of the two reasons (that is, one of either unpaid rent or unpaid utilities) is invalid, just as a one month notice to end tenancy for cause is not invalid if only one of several instances of offensive behavior is found not to have occurred.

4. Order of Possession

Sections 55(1) and (1.1) of the Act state:

Order of possession for the landlord
55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

The 10 Day Notice meets the section 52 form and content requirements. As such, I must issue an order of possession a monetary order in favour of the landlord. As I have found that the unpaid utilities were not properly included on the 10 Day Notice, I will not order that they be repaid. However, I will order that the tenants pay the landlord $2,600 representing payment of rent due on February 15, 2022.

In the circumstances, I find it appropriate to grant an order of possession effective May 31, 2022. In light of the landlord's failure to prove good faith in issuing the Second Two Month Notice, the fact the tenants have purchased a new house with a possession date of June 1, 2022, and given the obvious confusion on the tenants encounter regarding their entitlement to an amount equal to one month's rent, I do not find it just or appropriate to end the tenancy any earlier.

For clarity, as rent is due on the 15th day of each month as I have issued an order of possession for May 31, 2022, I order that the tenants pay 50% of their monthly rent ($1,300) on May 15, 2022, as they are only entitled to possession of the rental unit for 50% of their billing period. If the tenants remain in the rental unit past May 31, 2022, the landlord will be entitled to *pro rata* compensation per section 57 of the Act.

5. Interpretation of the Tenancy Agreement

During the hearing, both parties made submissions as to whether the tenants had an obligation to pay a portion of the municipal water and garbage removal bill. While it was not necessary to determine this question when assessing the validity of the Notices, I will address it here, as a failure to do so would only invite a further dispute between the parties.

The second page of the tenancy agreement clearly shows that water and garbage removal are not included in monthly rent. The addendum states that the tenants are required to pay 60% of "utilities". "Utilities" is not a defined term under the Act or in the tenancy agreement, although I note that the Act defines "service or facility" to include "utilities and relates services" and "garbage facilities and related services", which suggests that "garbage facilities and related services" are not "utilities". The tenants argue that water is similarly excluded from the definition of "utility", although they point to no authority aside from a conversation with an information office of the RTB (whom I note is not a binding authority on such matters).

However, the tenants' argument misses the mark, in my opinion. If water and garbage removal are not "utilities" and if they are not included in the monthly rent, how much are the tenants required to pay for such services under the tenancy agreement? Clearly the parties did not contemplate that such services would be free or would be included with the rent. The tenants paid for these two items for two years before attempting to claw the payments back.

Rather, based on the conduct of the parties, I find it is more likely than not that the parties intended, at the time the tenancy agreement was entered into that the tenants would pay 60% of the cost of all items not included in the rent. To find otherwise would mean that the parties agreed the tenants would be responsible for some undefined portion of the cost of water and garbage removal and then simply chose to pay 60% of these costs once they became due. This does not accord with common sense or the preponderance of probabilities.

As such, I find that the tenants are required to pay 60% of the water and garbage removal services for the residential property and are not entitled to offset any amount already paid against any other utilities amount owing.

At the hearing, the tenants did not give evidence as to how much they believe they currently owe the landlord for unpaid utilities. However, they did not dispute that they failed to pay utilities as alleged on the 10 Day Notice ($528). Accordingly, I order that they pay the landlord this amount. They are also responsible for paying their portion of any utilities, water, or garbage removal costs that have been subsequently incurred. If they do not, the landlord may make an application to recover any unpaid amount.

As the landlord has been partially successful in these applications, I decline to order that he repay the tenants their filing fee.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenants pay the landlord $3,128, representing the following:

Description	Amount
February 15, 2022 rent	$2,600.00
Utilities arrears (as of January 26, 2022)	$528.00
Total	**$3,128.00**

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord by May 31, 2022 at 1:00 pm.

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 4, 2022

Residential Tenancy Branch