



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (Act) by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 31, 2022 (2 Month Notice) and to recover the cost of the filing fee.

Tenants CG and KS (tenants), a tenant advocate, AM (advocate), the landlord and counsel for the landlord, HF (counsel) attended the teleconference hearing. All parties were affirmed except for counsel who has already sworn an oath when called to the BC Bar. The advocate had an observer, DH (observer) attend and was not affirmed as they only observed the hearing. The parties gave affirmed testimony and/or made submissions and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. A summary of the evidence is provided below and includes only that which is relevant to my findings.

As neither party raised any concerns regarding the service of documentary evidence, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their email addresses and that they decision would be sent by email to both parties.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, should the tenant recover the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 28, 2020 and converted to a month-to-month tenancy after October 1, 2021. Monthly rent is \$2,000.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$1,000.00, which the landlord continues to hold.

The tenants were served on January 31, 2022 with the 2 Month Notice and received it the same day. The tenant filed their application to dispute the 2 Month Notice on February 14, 2022, which is within the 15-day timeline provided under the Act. The effective vacancy date listed on the 2 Month Notice is April 1, 2022. The parties confirmed that the tenants have paid for use and occupancy for May 2022.

The reason listed on the 2 Month Notice states:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).
Please indicate which close family member will occupy the unit.	
<input checked="" type="checkbox"/>	The landlord or the landlord's spouse
<input type="checkbox"/>	The child of the landlord or landlord's spouse
<input type="checkbox"/>	The father or mother of the landlord or landlord's spouse
<input type="checkbox"/>	The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
<input type="checkbox"/>	All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

The landlord testified that they intend to move into the rental unit after they do some small renos including "flooring and paint". The landlord confirmed they currently reside above the rental unit and that the upper portion of the home will be used as storage for a couple months and then the landlord plans to rent that space out. The landlord testified that they do not plan to charge more rent for the upstairs portion of the home.

The landlord described the home as follows:

Upstairs: 1,250 square feet (SF), backyard and patio, 3 bedroom, 2.5 bathrooms
Downstairs (Rental Unit): 1,200 SF, 3 bedrooms, 1.5 bathrooms

The landlord testified that the rental unit has a layout that is better suited for the landlord, which are larger bedrooms and a smaller entertaining area. The landlord

testified that they plan to move downstairs and could have served the tenants with a 10Day Notice or a 1 Month Notice and decided not to, which gives the tenants more time to find a new place to rent and gives the tenants one free month of compensation. Counsel submits that the 2 Month Notice shows good faith because the landlord is also opening themselves up to the possibility of owing another 12 months of compensation if the landlord fails to comply with the reason stated on the 2 Month Notice under the Act.

Counsel submits that their client intends to reside in the rental unit and plans to do some minor renos such as flooring and paint. Counsel stated that in 2025, the landlord has expected work changes but, in the meantime, for at least the next 2 years, the landlord intends to occupy the lower portion of the home, the rental unit.

The tenants questioned why the landlord would not do the renos gradually while the tenants reside there, and the landlord stated that they prefer to do the renos while living in the rental unit. The tenants raised the issue of the relationship between the male tenant and the landlord. The landlord has confirmed that he does not get along with the male tenant but that is not the reason for issuing the 2 Month Notice.

The advocate asked the tenants if they had any reason to believe that the landlord would not occupy the lower unit for at least 6 months. The tenants stated that the landlord works up north and has advised them that he needed someone to reside in the home for insurance purposes. The landlord denied that his house insured requires someone to reside in the home.

The advocate cited *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165, which addresses that the onus is on the landlord to establish they are acting in good faith, which I will address later in this decision. In addition, the advocate cited *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827, where 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.

The tenants asked the landlord if they could apply to rent the upstairs unit, and the landlord stated they could apply but “would be highly unlikely.” The landlord stated they intend to reside in the lower unit for 5 years unless their work plans change in 2 years. Counsel stated that the landlord did not realize they could end the tenancy via a mutual agreement, and as such, a mutual agreement was not offered to the tenants.

Counsel stated that the landlord is not attempting to avoid compensation and chose the 2 Month Notice to give the tenants more time and to give them a month of compensation for having to vacate.

While the tenants raised the issue of pages 3 and 4 not being served with the original 2 Month Notice, the tenants later confirmed that they received pages 3 and 4 of the four-page 2 Month Notice the next day, which I will address later in this decision.

The tenants described their conversation with a neighbour, KS on January 31, 2022. The tenants claim that KS told them that the landlord “was planning on evicting us for a while and that she was very sorry we were going through this. I was still in shock about even receiving the notice. I asked how she knew. She said (name of landlord) asked her to keep an eye on the place while he was away at work because he did not trust (name of male tenant).

The tenants also write in their evidence that on or about February 3, 2022 the landlord attended the rental unit and asked if they could talk about the eviction notice. The tenant stated they went outside and asked what they did wrong and was advised by the landlord that “It’s for landlord’s use of property. I’m moving in to renovate, I don’t like (name of male tenant’s) attitude.” The female tenant claims that the landlord told her that this was hard for the landlord also but that it is in his financial best interest to evict them, renovate the suite and put it back on the rental market for more money.

The landlord referred to a rebuttal letter submitted by his neighbour, KS, the same KS as described above by the tenant. The May 5, 2022 rebuttal letter from KS reads in part as follows:

May 5, 2022

Re: Event with tenants next door

Dear Sir/Madam,

I just wanted to clarify my conversation with [REDACTED]’s tenants and provide some context regarding the nature of my relationship with them. My work is currently operating remotely and as such I often see the comings and goings of the neighbourhood. Often when I’m leaving my house in the evenings, I see the tenants’ next door smoking outside and wave hello or have a quick chat. The day in question, [REDACTED] looked sad and I asked how they are doing. A week earlier, I did recall [REDACTED]’s mother coming by and serving them a notice for eviction so I figured that was it or possibly it was regarding her mother’s health. She has told me in the past about the family’s health problems and I asked how her mom was. The conversation was brief but I do recall it being centered on looking at the positives of the situation by thinking of ways to beat their competition when looking for another rental. I stated that from my experience they have always been quiet, which is appreciated. I left out the fact that their pets are a neighbourhood nuisance since I was focusing on the positives in that moment, although several neighbors have brought this up with them many times. I also mentioned by [REDACTED] paying them the required fees,

they will have enough money to pay a first and last month's rent somewhere, which as a landlord, would be attractive. I also mentioned the old owner [REDACTED] lives in [REDACTED] Lake and has trailers on his property for rent. He has since moved unfortunately and I just said I will look out for anyone I know who are renting out suites. So I just encouraged her to brainstorm a solution instead of becoming stuck in the problem. It was simply friendly advice, to which I realize now I shouldn't have offered. I genuinely feel bad for them and empathize for them on this housing crisis, as I do to anyone in their situation. I genuinely feel bad for their mom, and them dealing with Covid-19 virus, because I am a caring human being. I also realize that as a previous landlord, the owner has rights too which should be upheld by courts. I feel my words in their complaint was misconstrued in the fact that it sounded like I thought [REDACTED] was out to get them in some way. I am unaware of the specifics, but I 100% can say that [REDACTED] is planning on renovating the basement suite as he is living in it for an extended length of time. He has done so in the top suite, and has been successful living within a renovation mess, since he bought the house from the last owner [REDACTED]. Furthermore, I do not know any names besides hers and I am unaware of any specific issues with [REDACTED], which I believe was mentioned in their complaint. I said they were quiet and not causing problems like parties or crime in the neighbourhood, but never specifically named "[REDACTED]" and I don't know his name.

I regret the fact that I was pulled into the business next door as my intentions were genuine, but I am certain that [REDACTED]'s plans for the bottom suite are sincere.

[names and other personal information redacted to protect privacy]

The landlord claims that moving into the lower unit is altruistic by giving a family who needs more space and bathrooms a chance to rent the upper portion of the landlord's home for the same rent that the tenants are paying in the basement unit. As noted above, the tenants claim that the landlord advised them verbally that the landlord plans to re-rent for more rent upstairs after the renovations are completed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I will first address the four-page 2 Month Notice. While the tenants raised the issue of pages 3 and 4 not being served with the original 2 Month Notice, the tenants did confirm during the hearing that they received pages 3 and 4 of the four-page 2 Month Notice the next day, which I find is close enough to the date the 2 Month Notice was issued not to impact the tenants' ability to dispute the 2 Month Notice. This is supported by the fact that the tenants applied on time and within 15 days of the 2 Month Notice being served. Given the above, I find the onus reverts to the landlord to provide sufficient evidence that the 2 Month Notice is valid and was issued in good faith, as the tenants raised the issue of good faith during the hearing.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition,

when tenants have filed to cancel a 2 Month Notice for Landlord's Use of Property and calls into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an honest intention, with no ulterior motive to end the tenancy.

Although counsel submits and the landlord stated that the landlord intends to re-rent the larger upper rental unit for the same amount of rent as the lower unit is currently being rented for, I afford significant weight to the landlord stating it is "highly unlikely" that the tenants would be successful in applying and renting the upper rental unit. The reason I afford that statement significant weight, as I find it supports an ulterior motive to evict the tenants out of the lower rental unit and then stating it is "highly unlikely" they would be chosen to rent the upper unit at the same rent as the lower unit. I find that it is more likely than not that the reason for serving the 2 Month Notice was due to the poor relationship between the male tenant and the landlord.

While the tenants' description of their conversation with neighbour KS differs from the landlord's rebuttal letter directly from KS, I find that both versions offset each other and that one does not outweigh the other.

I agree with the tenants that minor renos such as flooring and paint could easily be done while the tenants are occupying the rental unit. I also find the description provided by the landlord of the small renos to be vague. In reaching this finding I have considered that the landlord did not provide specific details about the length of time the renos would take, the time, effort, and amount of flooring to be changed and the extent of the painting. Instead, the landlord stated the upper unit would be used as storage for a couple months before it is rented.

I also afford no weight to the landlord being able to issue other notices to end tenancy **because other notices were not served** so the merits of such notices have not been addressed. **Furthermore, the 10 Day Notice and 1 Month Notice do not include a good faith requirement, whereas the 2 Month Notice does include a good faith requirement.**

Given the above, I find it is more likely than not that the landlord has issued a 2 Month Notice to evict a male tenant that the landlord does not personally like or trust. As a result, I find the 2 Month Notice was issued with an ulterior motive and therefore was not issued in good faith. I also find it just as likely than not that the landlord would be re-renting a larger rental unit above with an extra bedroom, a backyard and patio for more rent at the current rental market rate versus the same rental amount as claimed by the

landlord. I find that statement by the landlord does not have the ring of truth when the upper unit is larger, has an extra bathroom and more outside space to use and enjoy.

RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member (PG 2A) states in part, which applies:

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.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

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 dishonest motive.

[reproduced as written]

Consequently, I **cancel** the 2 Month Notice due to lack of good faith. The 2 Month Notice is of no force or effect as a result.

I **ORDER** the tenancy to continue until ended in accordance with the Act.

As the tenant's application had merit, I find that the tenant is entitled to monetary compensation pursuant to section 67 of the Act, in the amount of **\$100.00** to recover the cost of \$100.00 filing fee.

I authorize the tenant to a **one-time rent reduction in the amount of \$100.00** from a future month of rent, in full satisfaction of the tenant's recovery of the cost of the filing fee. This order is made pursuant to section 62(3) of the Act.

Conclusion

The 2 Month Notice issued by the landlord is cancelled and is of no force of effect due to a lack of good faith.

The tenancy is ordered to continue until ended in accordance with the Act.

The tenant may deduct \$100.00 from a future month of rent in full satisfaction of the filing fee as noted above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 25, 2022

Residential Tenancy Branch