Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes CNL, OLC, FFT

Introduction

Both hearings dealt with the tenant's application, filed on February 5, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 31, 2022 ("1 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The "first hearing" occurred on May 10, 2022, and lasted approximately 63 minutes, from 9:30 to 10:33 a.m. The "second hearing" occurred on June 16, 2022, and lasted approximately 34 minutes, from 9:30 to 10:04 a.m.

The landlord's lawyer, the landlord's agent, and the tenant attended both hearings and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, the landlord's lawyer, the landlord's agent, and the tenant confirmed their names and spelling. At both hearings, the landlord's lawyer and the tenant both provided their email addresses for me to send copies of this decision to both parties after this hearing.

At both hearings, the landlord's lawyer stated that he had permission to represent the landlord named in this application. At the first hearing, he confirmed that the landlord owns the rental unit and provided the rental unit address.

At both hearings, the landlord's agent stated that he had permission to represent the landlord named in this application. At both hearings, he said that the landlord's lawyer had permission to represent the landlord. At the second hearing, he confirmed the landlord's name and spelling. At the second hearing, he confirmed that the landlord's lawyer had permission to speak on his behalf.

At both hearings, the landlord's lawyer identified himself as the primary speaker on behalf of the landlord and the landlord's agent agreed to same.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recordings of any RTB hearings by any party. At the outset of both hearings, the landlord's lawyer, the landlord's agent, and the tenant all separately affirmed, under oath, that they would not record both hearings.

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At both hearings, both parties had an opportunity to ask questions, which I answered. At the first hearing, I informed both parties that I could not provide legal advice to them. At both hearings, neither party made any adjournment or accommodation requests.

At both hearings, both parties confirmed that they did not want to settle this application, they were ready to proceed with both hearings, and they wanted me to make a decision. At both hearings, both parties were given multiple opportunities to settle and chose not to do so. At the second hearing, both parties were given additional time and spoke privately but did not settle this application. At the second hearing, both parties were given opportunities to settle at the beginning and end of the hearing but chose not to do so.

Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on May 10, 2022 was adjourned for a continuation after 63 minutes because it did not finish within the 60 minute hearing time and both parties had further submissions to make. By way of my interim decision, dated May 10, 2022, I adjourned the tenant's application to the second hearing date of June 16, 2022. During the second hearing, both parties affirmed that the above information was correct.

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notice of reconvened hearing with the second hearing date information, from the RTB. At the second hearing, both parties confirmed receipt of my interim decision.

At the second hearing, I reviewed the following information, contained on page 3 of my interim decision, with both parties:

> *The landlord's lawyer presented his submissions first and said that he completed them during this hearing. The tenant presented her submissions second, after hearing submissions from the landlord's lawyer first. The tenant stated that she had approximately 1 minute left to complete her submissions, as she was almost finished. The landlord's lawyer said that he had approximately 5 to 7 minutes of response submissions to the tenant's testimony.*
> *…*
> *I informed both parties that they confirmed they served all their evidence for this hearing, and they received all evidence from the other party. I notified both parties that they confirmed they did not want to call any witnesses. I informed both parties that the reconvened hearing is only to hear the remaining testimony from the tenant and the response submissions from the landlord's lawyer. Both parties confirmed their understanding of the above information.*
>
> *I notified both parties are directed not to serve any further evidence regarding this application, prior to the reconvened hearing. I informed them that no witnesses are permitted to testify at the reconvened hearing. I notified them that neither party is permitted to file any new applications after this hearing date of May 10, 2022, to be joined and heard together with the tenant's application, at the reconvened hearing.*

At the second hearing, both parties affirmed that the above information contained in my interim decision was correct. Despite the above time estimates provided by each party at the first hearing, regarding how much longer it would take for them to present their final submissions, the second hearing lasted 34 minutes. Regardless, I provided both parties with ample and additional time to present their final submissions at the second hearing, as both parties required more time than the original time estimates that they provided at the first hearing.

At the first hearing, the landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's

evidence. In my interim decision, I found that in accordance with sections 88, 89 and 90 of the *Act*, the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

At the first hearing, the landlord's lawyer stated that the tenant was served with the landlord's 2 Month Notice on January 31, 2022, by way of leaving a copy in the tenant's mailbox. The tenant testified that she received the notice on February 1 or 2, 2022 but she could not recall the exact date. She explained that she made an error in her application, when she claimed that she received the 2 Month Notice on January 31, 2022. She stated that she is deemed received with the notice, three days after it was left in her mailbox on January 31, 2022. In my interim decision, I found that in accordance with sections 88 and 90 of the *Act*, the tenant was duly served with the landlord's 2 Month Notice. The tenant confirmed that she filed this application on February 5, 2022, to dispute the notice.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for landlord's use of property?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for her application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at both hearings, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts at the first hearing. This tenancy began on December 1, 2017. Monthly rent in the current amount of $4,000.00 is payable on the first day of each month. A security deposit of $2,000.00 and a pet damage deposit of $1,000.00 were paid by the tenant and the landlord continues to retain both deposits in full. A written tenancy agreement was signed by both parties.

At the first hearing, the landlord's lawyer stated the following facts. The tenant alleges that the landlord issued the 2 Month Notice in bad faith because he wants to re-rent the property. The tenant alleges that the landlord has made repeated attempts to evict her. However, the landlord is acting in good faith, as the landlord's daughter AC ("landlord AC") intends to move into the rental unit. The previous RTB hearing that the tenant referred to in her application, resulted in a mutual agreement, which is independent from this hearing. The landlord provided written submissions and evidence, including a letter from landlord AC. The letter states the following information regarding landlord AC, including:

- landlord AC had a material change in circumstances since covid;
- she is working as a barrister and solicitor, a commissioner of oaths, and an officer of the court;
- she has to engage in phone conversations, zoom calls, attend court appearances, and complete legal research, as part of her work;
- she currently lives at home with three younger siblings and her parents and does not drive;
- her work has now changed into a hybrid schedule, where she is required to work from home two to three times per week and her employer encourages employees working from home;
- she has distractions with her siblings, who also work from home;
- she has stress and anxiety, and her mental health will improve if she moves out of her current home;
- she needs to be close to transit, in order for her to make court appearances in person and go to the office, and the rental unit is located close to transit.

At the first hearing, the landlord's lawyer made the following submissions. The landlord will not be collecting any rent from landlord AC or re-renting the unit for higher rate. The landlord's other property has been sold and is not available for landlord AC to use. As per the landlord's evidence, the landlord provided alternative places for rent to the tenant, nearby in the same vicinity, for cheaper rent prices. The tenant lives with her daughter and does not need a four-bedroom house, which is the size of the rental unit. The landlord's daughter cannot pay rent, incur debt, and live somewhere else because of the tenant. The previous RTB application was filed in July 2021 and the decision was made on November 12, 2021. The previous RTB hearing was a mutual agreement, made under "amicable" circumstances. Landlord AC was informed in December 2021 about the change to a hybrid work schedule starting in January 2022, which is when the 2 Month Notice was issued to the tenant. Section 53 of the *Act* states that incorrect effective dates are automatically changed in a notice to end tenancy. The tenant has been given additional time past April 1, 2022, the effective date on the 2 Month Notice.

The tenant's evidence is “too faint and illegible” to read. The tenant’s evidence is irrelevant, it should be disregarded, and the tenant has provided no proof. The RTB has no jurisdiction over human rights claims since they fall under the Human Rights Tribunal. The tenant has not provided any proof of her disability except “distorted pictures.”

At the first hearing, the tenant testified regarding the following facts. At the previous RTB hearing, the landlord served an improper termination letter to the tenant on July 6, 2021, with the wrong date and form and this was addressed at the previous hearing. However, the landlord did the same thing again. The previous RTB hearing was not settled in a positive manner and the landlord “begrudgingly settled.” After the previous RTB hearing, the tenant told her relatives that the landlord was unhappy, and she was expecting bad stuff to happen. The 2 Month Notice was left in the tenant’s mailbox and was signed on January 31, 2022, with a letter from the landlord's agent. The 2 Month Notice is considered received three days later because it was left in the tenant’s mailbox. The landlord is aware of this from the previous RTB hearing. The landlord has other rental properties. The landlord owns a hotel, and his daughter can reside there and have an office there too. The other homes in the tenant’s neighborhood that are comparable are expensive, since they are properties of 3,000 square feet, and the rental unit is 3,400 square feet. The alternative rental properties provided by the landlord to the tenant, are not comparable, since they show apartments ranging between 770, 800, 944, and 1,000 square feet. The tenant provided comparable rentals but there is nothing in the area on the online website. The tenant provided properties that range between $6,299.00, $7,800.00 for April 1, and $4,800.00 for a unit for sale to renovate or tear down. The landlord and the tenant are not getting along. The landlord threatened legal action and tried to intimidate the tenant as per the attached papers. At the previous RTB hearing, the landlord violated the tenant’s human rights, stating that he did not want the tenant there but a family instead. The landlord does not trust the tenant. Section 10(1) of the *B.C. Human Rights Code* prevents discrimination in a tenancy. The tenant is a disabled single mother.

At the first hearing, the tenant stated the following facts. She previously used Airbnb to help pay her bills. She has been a polite and respectful tenant. The tenant's daughter, who has multiple disorders, lives with the tenant, and requires stability in the home, or her mental health will decline. The tenant provided a letter with her disability designation. On January 1, 2022, the tenant reported carbon monoxide smoke detector problems and, in the week prior, the landlord said they could not check it. The landlord claimed to be sick with covid and could not respond, yet the landlord had the “energy” to serve the 2 Month Notice to the tenant on January 31, 2022, and there were emails and

conversations regarding this. The landlord had to reimburse the tenant for utilities of 25% for the basement tenants and the landlord did not respond. The landlord would rather have one basement tenant instead of two tenants rent the entire house including the basement. The landlord overcharged the tenant for the damage deposit and the tenant changed it to the legal amount. The landlord has refused to follow the rules. The landlord has illegally increased the tenant's rent from January 2019 to January 2021 and has tried to "bribe" the tenant with money to leave. The text messages from the landlord are not on proper forms. The landlord threatened the tenant with his lawyer for this proceeding and provided letters. The landlord refused many repairs, and the rental unit is 10 years old. The landlord claims that the tenant is the "most demanding" compared to other tenants. In January 2021, the tenant told the landlord about mold in the shower. The landlord delayed the air conditioning repair in the summer of 2021. The heat and plumber were in April 2022. The ice machine in the fridge never worked. The tenant had to pay for the projector in the theatre room. There was a news article about demolishing in January 2018, since the rental unit is surrounded by apartment buildings. The landlord is not using the basement suite. This is the second eviction notice after the last RTB hearing, filed in July 2021.

At the second hearing, the tenant testified regarding the following facts. In her online RTB application details, the tenant filled in the date of the 2 Month Notice form, in error. The landlord left the notice in her mailbox. At the previous RTB hearing, there was an issue regarding service. The landlord claimed to have heard and saw bodies inside the rental unit when he delivered the 2 Month Notice to the tenant's mailbox, but it may have been the tenant's dog since he is an inside dog. The tenant checked her migraine journal, and she was "incapacitated" by her migraine from January 28 to February 2, 2022. The tenant's family and friends know not to contact the tenant when she has a migraine. The tenant had no opportunity to receive the documents. The 2 Month Notice is deemed received three days after it was left. In the landlord's documents, the landlord said that landlord AC is a lawyer and the tenant looked up her work address. The landlord built the basement suite for landlord AC, to make it available for her to use. Landlord AC has not provided medical records regarding her mental health issues. The tenant's disability is recognized by the province, and she has provided documentation for it. The landlord's documents claim that landlord AC lives with her siblings and parents. However, the covid pandemic has been ongoing since 2020, so how did landlord AC's work schedule change because she must have been working home since the start of covid back in 2020. Why is landlord AC not able to use the basement suite of the rental property, which is empty. The landlord's documents claim that landlord AC is a full-time junior lawyer, so the tenant looked up on a public job application website that a junior lawyer makes $84,500.00 in salary and an average lawyer makes

$100,000.00 in salary, in the area. The tenant makes $19,000.00 per year on disability and has a daughter. The landlord will lose $4,000.00 in rent per month from the tenant if landlord AC moves into the rental unit. Landlord AC can use the basement suite at the rental property, for free. A proper 2 Month Notice was not given to the tenant. The tenant is a disabled mother and makes a fraction of landlord AC's income. Why does landlord AC need a four-bedroom, three-level home when the basement is empty.

At the second hearing, the landlord's lawyer stated the following in response to the tenant's submissions. Service issues regarding the 2 Month Notice being left in the tenant's mailbox were already addressed in the Arbitrator's interim decision. The Arbitrator found that service was properly effected on January 31, 2022, so that interim decision should stand. The tenant claims that she provided evidence of her mental and physical disability but her evidence package of documents, pictures, text messages and emails, were illegible, not readable, or reliable and should be given no weight or probative value. The landlord has established and provided uncontroverted evidence as per landlord AC's letter, which is uncontested, credible and reliable. The tenant has not provided any substantiated evidence to question the reliability of landlord AC's letter. The landlord does not own any other properties and the landlord and the landlord's agent have provided direct evidence of this fact. The tenant has not established or provided evidence that the landlord owns other properties. The landlord has no intention to collect rent from landlord AC and she has no intention of paying rent to the landlord. Landlord AC is not required to incur debt and live at other properties for the tenant's benefit. It is the landlord's prerogative to provide the rental unit to landlord AC, even if he is losing income and providing free housing, in order to maintain the mental health and work of his daughter.

At the second hearing, the landlord's lawyer stated the following in response to the tenant's submissions. Landlord AC cannot move into the basement suite of the same rental property, where the tenant currently lives upstairs. The basement suite only has one bedroom and there is no laundry or kitchen. There is limited cell phone reception and landlord AC is required to make frequent video and phone calls for work. The basement suite is not an option for landlord AC. The tenant provided no evidence that the landlord constructed the basement for landlord AC. The tenant claims that she no longer operates a business because she gave up her business license. However, the tenant provided evidence that she generates income from long term guests staying at the rental property, since she rents rooms to them and receives an income. These actions are not covered by the RTB. Landlord AC provided a signed letter, as a commissioner of oaths, regarding evidence of her mental health issues and her need to live at the rental property. The tenant's application should fail, and the landlord should

be granted a two-day order of possession against the tenant. The landlord has provided evidence that his daughter intends in good faith to occupy the rental unit, which is uncontested and unopposed by the tenant. Landlord AC should not be required to move elsewhere and incur costs because of the tenant. The 2 Month Notice was issued to the tenant five months ago and the tenant had several opportunities to relocate but she has not agreed to the landlord's offers.

At the second hearing, the tenant stated the following in response to the landlord's lawyer's submissions. The basement at the rental property has a kitchen and Wi-Fi, as other people have lived there and worked from home. There was no Wi-Fi when the landlord's agent was staying there because the tenant did not share her Wi-Fi password with him. The landlord has to pay for Wi-Fi in order to use it in the basement. The landlord did not ask the tenant for clear evidence previously, if he was unable to read her documents properly. There is no note from landlord AC's doctor, provided as evidence by the landlord. The tenant is not receiving income from people who are living at the rental property, it is "shared rent" which reduces the tenant's costs.

At the second hearing, the landlord's lawyer stated the following in response to the tenant's submissions. There is no kitchen at the basement of the rental property and there is no phone network, which is required for video and phone calls. The tenant stated that she needs income from long-term guests who stay at the rental property, to pay her medical bills and expenses.

At the second hearing, the tenant stated the following in response to the landlord's lawyer's submissions. The tenant does not have a lease to obtain rental income for any guests that stay at the rental property.

Analysis

Credibility

At both hearings, I found the affirmed submissions of the landlord's lawyer to be clear, concise, credible, and convincing. He provided his submissions in a calm, candid, straightforward, and consistent manner. His submissions did not change throughout both hearings.

Conversely, I found that the submissions of the tenant were unclear, confusing, inconsistent, and less credible. At both hearings, the tenant focussed on the date that she received the landlord's 2 Month Notice, repeatedly changing her testimony and

providing different dates of January 31, February 1, February 2, and February 3, 2022. Despite the fact that I made a finding regarding service of the 2 Month Notice in my interim decision on May 10, 2022, which the tenant agreed that she received and reviewed, the tenant continued to provide different date submissions at the second hearing on June 16, 2022, claiming that she reviewed additional evidence after the first hearing. I repeatedly notified both parties at the second hearing that they were not required to repeat any information provided at the first hearing, and the tenant continued to repeat the above information at the second hearing.

Application and Rules

The tenant, as the applicant, received an application package from the RTB, including instructions regarding the hearing process. The tenant served her application to the landlord and the landlord confirmed receipt of same. The tenant received documents entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing her original application and when the first hearing was adjourned to the second hearing. These documents contain the phone number and access code to call into both hearings.

The NODRP states the following at the top of page 2, in part (emphasis in original):

> *The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*
>
> - *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
> - *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
> - *Parties (or agents) must participate in the hearing at the date and time assigned.*
> - *The hearing will continue even if one participant or a representative does not attend.*
> - *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days. I informed both parties of same during the second hearing. Links to the RTB website and the *Rules* are also provided in the NODRP.

The tenant received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support her application, and links to the RTB website. It is up to the applicant to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the applicant to provide sufficient evidence of her claims, since she chose to file this application on her own accord.

The following RTB *Rules* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

I find that the tenant did not properly present her application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during two hearings, as per Rules 7.17 and 7.18 of the RTB *Rules.*

Both hearings lasted 97 minutes total, so the tenant had ample time and multiple opportunities to present her application and respond to the landlord's claims. I repeatedly asked the tenant if she had any other information to add and if she wanted to respond to the landlord's submissions at both hearings.

The tenant failed to properly go through the voluminous documents that she submitted with her application. The tenant referenced some of her documents but did not review most of them in specific detail during both hearings.

Findings

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after they receive the notice. The tenant provided four different dates of service, including January 31, February 1, February 2, and February 3, 2022, for when she received the landlord's 2 Month Notice. As noted above in this decision, I found that the tenant was duly served with the landlord's 2 Month Notice.

The tenant filed this application to dispute the 2 Month Notice on February 5, 2022. Therefore, the tenant is within the fifteen-day time limit under the *Act,* whether she received the 2 Month Notice on January 31, February 1, February 2, or February 3, 2022. Accordingly, where the tenant applies to dispute the notice in time, the burden of proof is on the landlord to prove the reason on the notice.

Section 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, states the following, in part, in section "B. Good Faith:"

> *In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*
>
> *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. 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 (s.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 suggest 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.

I accept the landlord's documentary evidence and the submissions of the landlord's lawyer that the landlord's daughter, intends, in good faith, to occupy the rental unit. The landlord's daughter qualifies as a close family member under section 49 of the *Act*.

I find that the landlord has no ulterior motive to end this tenancy. I find that the landlord does not intend to re-rent the rental unit to obtain a higher rent. I find that the landlord will not obtain any financial profit, if landlord AC moves into the rental unit, as he does not intend to collect rent from her, and she does not intend to pay rent to him.

I accept the affirmed submissions of the landlord's lawyer and the signed letter from landlord AC, dated April 29, 2022, who I accept is a lawyer, commissioner of oaths, and an officer of the Court. The tenant did not dispute the credentials of landlord AC at both hearings. I find that landlord AC's letter is reliable and credible, and the tenant did not dispute same at both hearings.

I accept that landlord AC currently lives at a different property with her parents and three younger siblings, including the landlord, who is her father. I accept that landlord AC is a junior lawyer, who finds it difficult to work from home, with five other people in the house, as her three younger siblings work from home too. I accept that in order for landlord AC to successfully complete her work from home, she requires a quiet environment, where she is not disturbed by others. I accept that landlord AC does not drive so she is required to be close to transit, in order to attend Court and her work office.

I accept that covid-19 is an unpredictable worldwide pandemic, that is not within the control or predictability of either party. I find that covid is constantly changing, resulting in the issuance of mandatory health orders, including those affecting workplaces, to all residents of this province. I accept that landlord AC's employer changed to a hybrid work schedule in December 2021, due to covid, and encouraged employees to work from home beginning in early 2022, since landlord AC was previously attending at the office full time since July 2020. The landlord issued the 2 Month Notice to the tenant in January 2022, which I find is within a reasonable period of time of when he was informed about landlord AC's change in work schedule.

I find that the tenant was unable to provide sufficient evidence to dispute the landlord's 2 Month Notice and to support her assertion that landlord AC does not intend, in good faith, to occupy the rental unit.

I find that the tenant failed to provide sufficient evidence of the following: that the landlord's intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, or evidence to show that the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, to suggest that the landlord is not acting in good faith. This is as per Residential Tenancy Policy Guideline 2A above.

I find that landlord AC cannot be expected to incur debt and live at a different property, in order to ensure the tenant's continued tenancy at the rental unit. I find that landlord AC cannot live at another rental unit for free, as she does not intend to pay rent to the landlord if she moves into the rental unit. I find that the tenant failed to provide sufficient documentary evidence that the landlord owns other properties, where landlord AC can reside. The landlord's lawyer affirmed that the landlord does not own any other rental properties. I find landlord AC's work salary to be irrelevant, as she is entitled to live for free at the landlord's property if she chooses to do so, regardless of her salary. I find that the tenant failed to provide sufficient documentary evidence of landlord AC's salary. The tenant claims to have found comparable salaries for lawyers in the area on a public online job application website, which does not prove landlord AC's actual salary.

I find that it is not reasonable for the tenant to suggest that landlord AC live and work from a hotel. This is not a "comparable vacant rental unit" as per Residential Tenancy Policy Guideline 2A, above. Hotels are usually temporary nightly accommodations for travellers who pay a nightly fee in order to reside there, not long-term permanent accommodations where people can live and work from a hotel room. Hotels are also busy and noisy, by nature of their frequent customers checking in and out. Landlord AC

identified noise and disruptions as an issue in her current home with her own family of five people, so a hotel room is not a reasonable alternative. Landlord AC does not want to pay rent and does not intend to do so, to the landlord. Residing in a hotel room costs a nightly rate and would reduce profit from other customers who want to stay at the hotel room. The tenant failed to provide sufficient documentary evidence that the landlord owns a hotel that landlord AC can use as a permanent accommodation, as the landlord's lawyer disputed same.

I find that landlord AC cannot live and work from the basement suite at the rental property. The landlord's lawyer stated that the basement does not have a kitchen, laundry facilities, or a reliable phone network. The tenant stated that the basement suite has a kitchen and proper Wi-Fi; however, she did not address the laundry or phone network issue. I find that landlord AC should not be required to share the rental property and laundry facilities, with the tenant and her daughter who live upstairs in the same house. I find that an unreliable phone network in the basement of the rental unit, would interfere with landlord AC's ability to make phone and video calls, which she said are part of her work as a lawyer. The tenant failed to provide sufficient documentary evidence that the landlord constructed the basement suite specifically for his daughter to use, as the landlord's lawyer disputed same.

The tenant identified rent increase issues, repair issues, and other problems with the landlord. I find that this is a tenancy of almost 5 years, from December 1, 2017, to the date of the second hearing, June 16, 2022. The tenant continued to reside in the rental unit, despite the above issues. The tenant claims to have paid rent increases for two years to the landlord. Yet, the tenant claimed that she could not find any other places in the area with the same comparable rent as she currently pays. At both hearings, the tenant failed to identify any previous RTB applications that she filed for repairs or to dispute rent increases from the landlord.

Both parties identified a previous RTB decision from November 12, 2021, after the tenant filed the original application in July 2021. I have reviewed the previous RTB decision, which was provided by both parties. The file number for that hearing appears on the front page of this decision. The previous RTB decision indicates that both parties mutually agreed to a settlement to continue this tenancy. Therefore, I find that the previous RTB hearing does not question the landlord's good faith intention regarding the 2 Month Notice, as both parties previously reached a mutual settlement. If the tenant did not agree to the settlement, she could have declined the settlement and asked the Arbitrator to make a decision, as she did at both current hearings regarding this current application. Although the previous RTB hearing and decision occurred in November

2021, shortly before the landlord issued the 2 Month Notice to the tenant in January 2022, I find that this was a result of RTB wait times for hearings, which are not within the control of either party, since the tenant filed that application much earlier on July 9, 2021.

Based on a balance of probabilities and for the above reasons, I find that the landlord's daughter, landlord AC, intends to move into the rental unit in good faith to occupy it. I find that the landlord's daughter qualifies as a close family member under section 49 of the *Act*. I find that the landlord has met his onus of proof under section 49 of the *Act*.

I dismiss the tenant's application to cancel the landlord's 2 Month Notice, without leave to reapply. Pursuant to section 55 of the *Act*, I grant an order of possession to the landlord effective two (2) days after service on the tenant. I find that the landlord's 2 Month Notice, dated January 31, 2022, complies with section 52 of the *Act*.

The landlord requested an immediate two-day order of possession during the second hearing. At the outset of the second hearing, I reminded the tenant that I could issue a two (2) day order of possession against her if I upheld the landlord's 2 Month Notice and ended her tenancy. The tenant confirmed her understanding of same.

The effective date on the 2 Month Notice of April 1, 2022, has long passed, since it is now June 16, 2022, on the date of this hearing. Even if the effective date was automatically corrected to April 30, 2022, as per section 53 of the *Act*, if the tenant received the 2 Month Notice on February 1, 2 or 3, 2022, this date has also long passed.

Since I have ended this tenancy, the tenant's application for an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, is dismissed without leave to reapply. This claim relates to an ongoing tenancy only.

As the tenant was unsuccessful in this application, I find that she is not entitled to recover the $100.00 filing fee from the landlord.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. The tenant must be served with this Order. Should the tenant fail to comply

with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 17, 2022

Residential Tenancy Branch