# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, RP, FFT

Introduction

The tenants seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- An order pursuant to s. 49 to cancel a Two-Month Notice to End Tenancy signed on March 14, 2022 (the "Two-Month Notice");
- An order for repairs to the rental unit pursuant to s. 32; and
- Return of their filing fee pursuant to s. 72.

J.M. appeared as the Tenant. E.P. and J.P. appeared as the Landlords. The Landlords were represented by F.Q. as their counsel.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlords indicate that the Two-Month Notice was posted to the tenants' door on March 14, 2022. The Tenant acknowledges receipt of the Two-Month Notice on March 14, 2022. I find that the Landlords served the Two-Month Notice in accordance with s. 88 of the *Act* and it was received by the tenants on March 14, 2022.

The Tenant advised that the Notice of Dispute Resolution and their evidence was personally served on the Landlords. The Landlords acknowledge receipt of the tenants' application materials. I find that the tenants served their application materials in accordance with s. 89 of the *Act*.

Landlord's counsel indicated that the tenants were served with the Landlords' responding evidence by way of registered mail sent on June 22 and 27, 2022. The

Tenant acknowledges receipt of the Landlord's two packages and raised no objections with respect to service. I find that the Landlords served their responding evidence in accordance with s. 89 of the *Act*.

Preliminary Issue – Tenants' Claims

The tenants seek to cancel the Two-Month Notice and an order for repairs to the rental unit. These claims have different statutory outcomes. Further, if the Two-Month Notice is upheld and the tenancy ends, any issues related to repairs to the rental unit would be moot.

Rule 2.3 of the Rules of Procedure requires that claims in an application be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

I find that the primary issue on the tenants' application is the enforceability of the Two-Month Notice. The claim related to repairs is not sufficiently related to the primary issue of the application, which pertains to whether the tenancy will continue, or end, based on the Two-Month Notice. Pursuant to Rule 2.3 of the Rules of Procedure, I sever the tenants' claim under s. 32 of the *Act*. Should the tenancy end, it will be dismissed without leave to reapply. Should the tenancy continue, it will be dismissed with leave to reapply.

The hearing proceeded strictly on the question of whether the Two-Month Notice should be cancelled.

Issues to be Decided

1) Should the Two-Month Notice be cancelled?
2) If not, is the Landlord entitled to an order of possession?
3) Are the tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on February 1, 2019.
- Rent of $1,573.25 is due on the first day of each month.
- The Landlords hold a security deposit of $775.00 and a pet damage deposit of $775.00 in trust for the tenants.

The parties provided a copy of the written tenancy agreement. The current tenancy agreement is for a fixed term ending on April 1, 2022 and reverting to a month-to-month basis thereafter.

The Landlords advise that they purchased the residential property sometime in June 2021. The parties described how the subject rental unit is a basement suite within a single detached home in which the Landlords reside in the upper portion.

According to the Landlords, E.P. provides piano lessons out of the house and that when they purchased the property, they had considered use of the basement suite as a teaching space for the piano lessons. They say the Two-Month Notice was issued so that E.P. can use the rental unit for piano lessons.

A copy of the Two-Month Notice was put into evidence by the parties and lists an effective date for the notice as May 31, 2022. It was issued on the basis that the landlord or the landlord's spouse would be occupying the rental unit.

Counsel advised that the Landlords understood that the tenants would be vacating the rental unit at the end of its term in April 2022 as they would be moving for school. It was argued that the Two-Month Notice was issued after the tenants had not given the Landlords notice that they would be leaving in April 2022 as per the Landlords previous understanding.

Counsel directed me to a text message between the parties from mid-September 2021 in which the Landlord J.P. asks the Tenant whether they still planned on moving at the

end of the school year. The Tenant replied that he had no idea where he would be going as the application process had only just started.

The Tenant alleges the Landlords issued the Two-Month Notice in bad faith. The Tenant testified to a dispute with respect to the use of the backyard, specifically the use of the backyard by the tenants' dog. I was directed to the original tenancy agreement signed between the Tenant and his first Landlord. In the margins, there is a notation on the margins beside the pet damage deposit clause stating: "upper yard only". A text message provided by the Tenant from E.P. dated August 24, 2021 states the following:

> "Okay…listen…our back yard is not your dog's toilet. It is not OKAY and it is very unpleasant for us to see your dog's poop when we look out from our dining window, especially while eating…if you guys used the back yard responsibly, we may not come to this conclusion. We've been doing all the yard work and seems like you guys are using our back yard as if it's your dog's toilet. (…)"

The text messages provided by the Tenant continue, with some apparent dispute regarding a gate in the backyard. The dispute regarding the gate or the requested restrictions on use of the backyard are not relevant to this dispute.

In the Tenant's telling, the issue with respect to use of the backyard climaxed in an argument that took place in February 2022. I was provided with various video recordings by the Tenant. Two of the recordings appear to pertain to the argument that took place between the Tenant and E.P.. The Tenant argues that the Two-Month Notice was issued due to the current level of conflict he has with the Landlords.

I was directed to a notice of rent increase issued on January 30, 2022, a copy of which was put into evidence. The notice of rent increase shows that rent increase was to take effect on May 1, 2022. The Tenant argues that if it was the Landlords' intention to occupy the rental unit months as they argue, it is illogical for them to issue a notice of rent increase that would take effect after the presumed departure of the tenants by April 2022.

A further recording provided by the Tenant appears to have been taken after the Two-Month Notice was issued as the Tenant asks when the Landlords decided to issue the notice. In response, a female voice can be heard saying "Well, do you remember the encounter that we had in the backyard?" and a male voice responds, "That was the moment you decided you didn't want us anymore?". The female voice answers "Well

well not...well yeah basically I don't want anymore troubles". I note that the passages above are not an official transcription of the recordings but faithfully summarize the relevant dialogue.

In response to the video recordings, E.P. says that she was angry. The Landlords did not indicate the recordings were in any way inaccurate.

The Tenant testified that E.P. is currently instructing piano from the main portion of the house and that it appears the lessons are taught on a grand piano. The Tenant argues that the piano may not fit in the rental unit. Landlord's counsel argued that the space may need to be renovated. Landlord's counsel advised that the Landlords have children and that it is difficult to teach piano in the upstairs portion by virtue of their children being present.

Counsel for the Landlords further provided submissions on whether use of the space for a piano business would qualify as occupation by Landlords. I was directed to previous decisions of the Residential Tenancy Branch and it was argued that use of the space by E.P. to give piano lessons would amount qualify as occupation.

Analysis

The tenants seek to cancel the Two-Month Notice.

Under s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice to the tenant when the landlord or a close family member intends, in good faith, to occupy the rental unit. Policy Guideline #2A provides the following guidance with respect to the good faith requirement imposed by s. 49:

> 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.

The Landlords argue that they have the good faith intention of occupying the rental unit for a piano lesson home business operated by E.P. I am not satisfied that the Landlords are doing so without ulterior motive.

The evidence provided by the Tenant is persuasive that the parties were in the midst of a significant degree of conflict regarding the use of the backyard. Though the Landlords did not address the conflict to the extent the Tenant did in his evidence, it is tacitly acknowledged at paragraph 13 of their written submissions. It is argued by the Landlords that the issue of the use of the backyard by the Tenants' dog is not a factor in issuing the Two-Month Notice.

The problem with the Landlords argument is that this is directly contradicted by the audio recording provided by the Tenant. The Tenant testified that the recordings were between him and the Landlords. The Landlords did not dispute the authenticity or accuracy of the recordings. The recording taken after the Two-Month Notice was issued clearly has the female voice, whom I take to be E.P., saying that the notice was issued in direct response to the argument the Tenant had had with her and that she did not want anymore trouble. The audio recording of the parties' argument provided by the Tenant, which is said to have taken place in February 2022, was certainly elevated and

displayed what I can only describe as a dysfunctional landlord-tenant relationship. The only response was from E.P. stating she was angry.

I place little weight in the argument that the Landlords understood that the Tenants would be vacating the rental unit in April 2022 and that they issued the Two-Month Notice after it was apparent this would not occur. The text message from September 2021 provided by the Landlords does not indicate a clear intention the tenants would be leaving at the end of the school year. Indeed, it displays uncertainty on the tenants future plans. Further, the wider context of the text message exchange in September 2021 was largely related to the ongoing dispute with the use of the backyard.

The Tenant argues that the Landlords position that the Two-Month Notice was issued after they failed to hear back on whether the tenants were leaving is illogical considering the notice to rent increase issued on January 30, 2022. I would agree with the Tenant's argument in this regard. If it had been the Landlords' understanding that the Tenant's would be vacating the rental unit at the end of the school year in April 2022, it would not make sense for them to issue a rent increase to take effect on May 1, 2022. I accept that their intention, at least on January 30, 2022, was that the tenancy would be continuing past April 30, 2022.

I find that the Landlords have an ulterior motive in issuing the Two-Month Notice. It is more likely than not because the Landlords no longer wish to have a tenant living in their basement rental unit in which they have a dysfunctional relationship. This is largely admitted by E.P. herself in the audio recording where she says she no longer wants trouble. As made clear by Policy Guideline #2A (citing *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827), "good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy." As I find that there is an ulterior motive, I find that the Landlords have failed to demonstrate their good faith intention to occupy the rental unit.

I grant the tenants' application and hereby cancel the Two-Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

I make no findings with respect to the dispute regarding the use of the backyard.

Conclusion

The Two-Month Notice is cancelled and of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

As the tenancy is continuing, the tenants' claim under s. 32 of the *Act*, which was severed by application of Rule 2.3 of the Rules of Procedure, is dismissed with leave to reapply.

As the tenants were successful in their application, I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlords pay the Tenants $100.00 filing fee. I exercise my discretion under s. 72(2) of the *Act* and direct that the Tenants withhold $100.00 on **one occasion** in full satisfaction of their filing fee.

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: July 13, 2022

Residential Tenancy Branch