



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on April 12, 2022 for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) issued by the landlord, compensation for a monetary loss or other money owed, and to recover the cost of the filing fee.

The tenant, the landlord and their witnesses attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed. The parties' witnesses called into the hearing when their testimony was given.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states that 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.

In this application, the tenant listed an additional claim. I find the most urgent matter to consider is the tenant's request for cancellation of the 2 Month Notice and further find that the monetary claim is not sufficiently related to the primary issue. I will, therefore, only consider the tenant's request to cancel the 2 Month Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

1. Should the 2 Month Notice issued by the landlord be upheld or cancelled?
2. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on April 1, 2017 and the monthly rent is \$1,400. The rental unit is in the lower, or basement, level of a home owned by the landlord.

The 2 Month Notice filed in evidence was dated March 30, 2022, for an effective move-out date of May 31, 2022. In her application, the tenant confirmed receiving the 2 Month Notice on March 30, 2022, by personal service.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the landlord or the landlord's spouse.

The tenant's application was filed within the 15 days after service allowed by the Act to dispute the Notice.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord stated that the upper unit is currently rented to friends, who needed a place to stay for a year and that they will be moving out next month.

The landlord stated that he plans on living in the rental unit when the tenancy ends rather than the upper unit, due to the stairs leading to the upper unit. The landlord stated that he is 70 years, will have an upcoming knee surgery, and has mobility issues.

The landlord submitted a written statement in support of the 2 Month Notice and in response to the tenant's application. Included in the landlord's written statement, the landlord listed "Other Notables". In part, the landlord wrote that the tenant has missed several months' rent over the years and that the tenant's live-in boyfriend did some mechanical work on his vehicle as partial payment. The tenant and her boyfriend twice altered some electrical things, which required a qualified electrician to address. The tenant changed the locks on the door without permission and only recently gave the landlord a key, and on one other occasion, the tenant used a house key kept in an outside location, entered the property and slept there when she was fighting with her boyfriend.

The tenant stated in her application the following:

*The landlord is not acting in good faith. The Landlord has said he is wanting to move into make repairs. Repairs specifically were ants, paint and mold. Mold restoration has already been completed. My Landlord has two residences he resides at. He spends 6 month of the year at his residence in Mexico and the other at his residence in (*other location*, BC. He also lives with his girlfriend (the Landlord address he included on the 2 month notice).*

[Reproduced as written except for anonymizing identifying information]

The tenant stated that she does not believe the landlord wants to move in permanently due to his plans to go to Mexico yearly for an extended time. The tenant stated that the landlord wants her evicted so that his maintenance man could have easier access to the rental unit. The tenant stated that the maintenance man told both her and another tenant living on the residential property that the landlord was going to get rid of them.

The tenant stated that from her view, the landlord had no mobility issues as she sees him on the residential property doing yard work and climbing the stairs, with no problems. The tenant stated that the day before the hearing, she saw the landlord cutting bushes and going up the stairs.

The tenant stated that when the landlord and his girlfriend came to the rental unit, wanting the tenant to sign a financial document, the tenant asked to look at it first. The girlfriend refused and when the tenant did not sign the document, the girlfriend gave the tenant the 2 Month Notice.

The tenant stated she asked the landlord if she could rent the upper unit, and the landlord refused.

The tenant submitted documentary and digital evidence, which included a transcript of a recording between the parties.

The landlord stated that he never spends 6 months each year in Mexico, having spent only 5 months there this winter and less than that during some of the previous years. The landlord submitted that he just did not want to keep driving back and forth between his girlfriend's and his home. The landlord stated that his other home referred to by the tenant was in a trailer park camping resort which is seasonal only, from April 15-October 15.

Landlord's witness –

The witness additionally provided a written statement. In this statement, the witness, who is identified as the landlord's girlfriend, stated that she has her own residence and lived on her own since her husband's death. The witness wrote that she was invited, and accepted, the landlord's invitation to stay in Mexico the past winter and spent 5 months. The witness wrote that the landlord served the tenant the 2 Month Notice as he wants to live in his own house and the landlord is only staying her house until the tenant vacates. The witness wrote they have no intention of living together permanently and that their current situation was untenable.

Tenant's witness –

The tenant's witness lives on the residential property of the landlord, by renting a site. The witness said that he received a 2 Month Notice from the landlord about the same time as the tenant did, although he has not vacated the site as yet. The witness said that the reason listed on 2 Month Notice he received was that the landlord's daughter would live there, but it was later used for storage.

The witness stated that the landlord's maintenance man told him and the tenant that he would have them both evicted for asking about the mold and that the maintenance man wanted them evicted to get access. The witness stated he did not dispute his 2 Month Notice as he has options.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based.

While the landlord has the burden of proof, I have reviewed and considered the oral, documentary, and photographic evidence of both parties.

Section 49 (3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or spouse intends in good faith to occupy the rental unit.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Tenancy Policy Guideline 2A (PG 2A) states that a landlord may end the tenancy if they or their close family member, spouse in this case, *"intend in good faith to use the rental unit as a living accommodation or as part of their living space"*.

PG 2A further provides that 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 their obligations under the Act.

PG 2A addresses good faith as follows:

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.

...

If there are comparable 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.

Upon a review of the relevant evidence, I find the landlord submitted insufficient evidence that he truly intends on using the rental unit as living accommodation for 6 months. I make this finding based on the following.

The effective date of the 2 Month Notice was May 31, 2022, which meant the landlord must truly intend using the rental unit as his living accommodation from June 1 through November 30, 2022. Considering the landlord's own evidence that he will go to Mexico for the winter months this year, as he did last year from October for 5 months, and in considering that the landlord potentially will live at his holiday home for extended time periods during the summer months, I find it unlikely the landlord will live in and occupy the rental unit for the required time frame.

The landlord listed in his own evidence the issues he has had with the tenant during the tenancy, which leads me to conclude that on a balance of probabilities, the landlord had an ulterior motive when issuing the 2 Month Notice.

Both the tenant and the tenant's witness testified that the landlord's maintenance man told them they would be evicted in order to have access.

While the landlord submitted that his age and mobility issues caused him to need the lower unit, I do not find any supporting evidence of this assertion, such as medical records. Additionally, the landlord failed to mention a knee surgery in his written statement, as did the landlord's witness statement, which I find to be an important and telling omission. The tenant testified, without dispute, that she observed the landlord the day prior to the hearing cutting bushes and going up and down the stairs.

Finally, the landlord has the option of moving into the upper rental unit in the residential property, as he acknowledged his friends were living there temporarily. In the evidence submitted by the tenant, the landlord said that the monthly rent for the upper unit would go from \$1,800 to \$2,500 when the upper tenants vacated, which is next month.

Given the evidence before me and taken in totality, I find that the landlord submitted insufficient evidence to prove on a balance of probabilities that the landlord intended on living in the rental unit for residential purposes for 6 months following the effective date of May 31, 2022 through November 30, 2022, or that the 2 Month Notice was issued in good faith without an ulterior motive.

Therefore, I find the tenant's application is successful, and as result, I **ORDER** the 2 Month Notice of March 30, 2022, is cancelled and is of no force or effect.

I **ORDER** the tenancy to continue until it may legally end under the Act.

I grant the tenant recovery of her filing fee of \$100. I authorize the tenant a one-time rent reduction of \$100 from a future monthly rent payment in full satisfaction.

Conclusion

The tenant's application seeking cancellation of the landlord's 2 Month Notice is granted. The 2 Month Notice of March 30, 2022, issued by the landlord is ordered cancelled. The tenancy will continue until ended legally under the Act.

The tenant is granted a one-time rent reduction of \$100.

The tenant's monetary claim is dismissed, with leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 17, 2022

Residential Tenancy Branch