



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, FFT

Introduction

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

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated April 18, 2022 ("1 Month Notice"), pursuant to section 47;
- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 18, 2022 ("2 Month Notice"), pursuant to section 49;
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two landlords, landlord CW ("landlord") and "landlord KW," and the two tenants, tenant IK ("tenant") and "tenant KF," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 49 minutes.

This hearing began at 1:30 p.m. with me, the two landlords, the landlords' witness, and the two tenants present. The landlords intended to call one "witness LB" at this hearing. Prior to witness LB being excluded from this hearing, landlord KW affirmed that she had the contact information for witness LB to recall her later during the hearing.

Witness LB was excluded from the outset of this hearing at 1:33 p.m. and did not return to testify, as the landlords did not recall her to do so. Approximately halfway through this hearing, prior to the landlords starting their testimony regarding their notices to end tenancy, I reminded the landlords that witness LB had yet to testify, and they still did not recall her. This hearing ended at 2:19 p.m.

The two landlords, the landlords' witness, and the two tenants all provided their names and spelling.

The landlords confirmed that they are married and co-own the rental unit. The landlord confirmed the rental unit address.

Landlord KW and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

Landlord KW and the tenant identified themselves as the primary speakers at this hearing. I informed all hearing participants that they could all speak and provide evidence and submissions at this hearing. Both parties confirmed their understanding of same.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by any participant. At the outset of this hearing, the two landlords and the two tenants all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed both parties that I could not provide legal advice to them. I notified both parties that my role as an Arbitrator was to make a decision regarding this application. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. Both parties confirmed that they did not want to settle this application, they were ready to proceed with this hearing, and they wanted me to make a decision. Both parties affirmed that they agreed and understood that they were legally bound by my decision.

The two landlords affirmed that they were prepared to accept the consequences of my decision if they were unsuccessful, and they did not obtain an order of possession against the tenants. The two tenants affirmed that they were prepared to accept the consequences of my decision if they were unsuccessful, and an order of possession was issued against them to vacate the rental unit in 2 days.

Landlord KW confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence. In accordance with sections 88 and 89 of the *Act*, I find that both landlords were duly served with the tenants' application and both tenants were duly served with the landlords' evidence.

Landlord KW stated that both tenants were served with the landlords' 1 Month Notice and 2 Month Notice on April 19, 2022, both by way of registered mail. The tenant confirmed receipt of the landlords' 1 Month Notice and 2 Month Notice, both on April 27, 2022, by way of registered mail. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' 1 Month Notice and 2 Month Notice on April 27, 2022.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to include the landlord's legal first name, rather than his nickname, and to add the name of landlord KW as a landlord-respondent party. Both parties consented to both amendments during this hearing. I find no prejudice to either party in making the above amendments.

Issues to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

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

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

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

Landlord KW and the tenant agreed to the following facts. Monthly rent in the current amount of \$850.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenants and the landlords continue to retain this deposit in full. The tenants continue to reside in the rental unit.

Landlord KW stated that this tenancy began on August 6, 2020, while the tenant claimed it began on September 1, 2020.

1 Month Notice

Landlord KW and the tenant agreed that the landlords issued the 1 Month Notice, with an effective move-out date of June 30, 2022, for the following three reasons indicated on page 2 of the notice:

- *Tenant or **animals** permitted on the property by the tenant has:*
 - *put the landlord's property at significant risk.*
- *Tenant has not done required repairs of damage to the unit/site/property/park.*
- *Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*

Landlord KW and the tenant agreed that the landlords crossed out "person" and replaced it with "animals" in the first reason on the 1 Month Notice, as per my emphasis noted above.

The tenants seek to cancel the landlords' 1 Month Notice. The landlords dispute the tenants' application and seek an order of possession against the tenants.

Landlord KW stated the following facts. The landlords gave the 2 Month Notice to the tenants before the 1 Month Notice because they did not realize the damages and repairs that needed to be done, due to the animals in the yard. The landlords need to get into the rental unit to complete repairs to damages. The landlords listed the rental unit for sale and the realtor took photographs for the sale and sent them to the landlords. The realtors' photographs showed damages from animals in the house and yard, that the landlords were previously unaware of. The residential area is being used as a hobby farm and the landlords have to deal with neighbours too. The landlords need to start cleaning the mess. There are animals under the house in the winter and at nighttime. The dirt has to be taken out, sterilized, and put back in. The backyard boiler is covered with a noxious weed and the boiler is full of hornets and wasps.

The landlord stated that the backyard has been destroyed by weeds and there is no yard maintenance whatsoever.

The tenant stated the following facts. The tenants' pets were known to the landlords before the tenants moved in, except for two lovebirds. There have never been any animals under the house. The geese house is 10 feet from the neighbours' bedroom window, not under the house. The tenant was in a cast for six weeks, so she was not able to weed as much in the yard. There has been no damage to the house. The

landlords refused to provide proper heat to the home, causing cracks in the walls. The tenants provided heat to the home and bought wood. The power bills were in the landlords' name until June 2022. The cracks were there when the tenants moved in. The dryer vent is connected inside and outside the home with two screens. The tenants shovelled the driveway. There is no wildflower mix, only a garden planted. The real estate agent and the tenant talked, and since the tenants were home 95% of the time, a lockbox was not needed, and it was not an issue for viewing the house. The tenant told the real estate agent that she believed the front of the house was the original miner's cabin but to ask the landlords for the exact date.

Landlord KW stated the following facts in response to the tenant's submissions. The tenant provided the above information to a viewer of the house, not a real estate agent. The tenants were not home all the time. When the landlords sent someone to pump the septic tank, they could not get the truck in, and the landlords had to hire someone to remove the roof of the hot tub deck, and the snow came off the top floor roof and caved in, and underneath was massive amounts of garbage. The person knocked on the door to give an estimate and no one answered. There are items still piled up as of July 26, 2022, when the landlords checked it. The geese have been kept in the basement, as there are massive feathers and goose droppings. No housing is outside in the yard for the geese, they are underneath the back step with no walls. No permission was given to the tenants to keep any animals in the house, as landlord KW is extremely allergic to cats, and there are photographs of cats in the windows. The landlords were only aware of the tenants' one rescue dog, that was not allowed in the house. The landlords were not aware of the birds, geese, or ducks that the tenants had at the rental property.

The landlord stated that there are photographs of the feathers.

2 Month Notice

A copy of the landlords' 2 Month Notice was provided for this hearing. Both parties agreed that the effective move-out date on the notice is June 30, 2022, indicating the following reason for seeking an end to this tenancy:

- *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 family member will occupy the unit.*
 - *The landlord or the landlord's spouse.*

The tenants seek to cancel the landlords' 2 Month Notice. The landlords dispute the tenants' application and seek an order of possession against the tenants.

Landlord KW stated the following facts. The landlords want to move into the house on July 1, 2022. Landlord KW verbally told the tenants in February and March 2022 that the landlords would be moving in on July 1, 2022, and they planned on cleaning, completing renovations, and listing it for sale, so they can find something more suitable, since they are senior citizens, and there are too many stairs.

The tenant stated the following facts. The landlords said that they would be moving in on July 1, 2022, and staying to do renovations until the house was sold. The house was listed for sale on April 5, 2022, before the 2 Month Notice was provided to the tenants. The tenants provided a copy of the advertisement for sale. The 2 Month Notice was issued in bad faith because the house is up for sale. The tenancy is still ongoing and should continue even if there is a sale of the house.

Landlord KW stated the following facts in response to the tenant's submissions. The landlords want to move into their house on July 1, 2022 until it is sold until they can buy something more suitable to live in. The landlords are retired and want to live in the area for the rest of their lives. The landlords will probably live in the rental unit for the next few years because they had to pull their sale listing off, because the rental unit is close to being "condemned." The landlords did not issue another 2 Month Notice for sale of the house. The landlords did not issue a 4 Month Notice to End Tenancy for repairs or renovations because they do not know the repairs that need to be made.

Analysis

Burden of Proof

During this hearing, I notified the landlords that they had the burden of proof, on a balance of probabilities, to prove the reasons for issuing the 1 Month Notice and 2 Month Notice to the tenants. The *Act*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlords to provide evidence of the reasons on both notices.

The landlords confirmed receipt of the tenants' application, which includes instructions regarding the hearing process. A document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") was issued by the RTB, which contains the phone number and access code to call into this hearing.

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

- *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.*
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The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed both parties that I had 30 days to issue a written decision, after this hearing date.

The landlords received a detailed application package from the RTB, including the NODRP document, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to the landlords to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlords to provide sufficient evidence of both the 1 Month Notice and 2 Month Notice, since they chose to issue both notices on their 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 landlords did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the landlords failed to properly go through their reasons and evidence for issuing the 1 Month Notice and the 2 Month Notice to the tenants.

The landlords submitted documents as evidence but failed to review or explain them in any detail during this hearing. They repeatedly referenced photographs but did not point me to any specific photographs, page numbers, or other specific information during this hearing.

This hearing lasted 49 minutes, so the landlords had ample time to present their evidence and respond to the tenants' submissions. I repeatedly asked the landlords if they had any other information to present and if they wanted to respond to the tenants' submissions.

1 Month Notice

On a balance of probabilities and for the reasons stated below, I make the following findings based on the evidence and testimony of both parties.

In accordance with section 47(4) of the *Act*, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the 1 Month Notice on April 27, 2022, and filed their application to dispute it on April 26, 2022, and updated it on April 29, 2022. Accordingly, I find that the tenants' application was filed within the ten-day time limit under the *Act*. Where tenants apply to dispute a 1 Month Notice within the time limit, the onus is on the landlords to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. I informed both parties of the above information during this hearing.

The landlords testified and indicated in the 1 Month Notice that animals permitted on the property by the tenants put the landlords' property at significant risk. Animals are not considered people or tenants, so the landlords cannot substitute this wording and change the approved form and content of the 1 Month Notice, as it is contrary to section 52 of the *Act*.

I find that the landlords provided insufficient documentary and testimonial evidence to show that the tenants put the landlords' property at significant risk, that the tenants engaged in a pattern of behaviour demonstrating *significant* risk, or the effect that the tenants' behaviour had on the landlords or other occupants.

The landlords' main complaint was related to damages caused by the tenants' birds, particularly in the yard at the rental property, based on photographs from their realtor. However, as noted above, the landlords failed to properly review or explain their photographs or other documents they submitted as evidence for this hearing. The landlords testified that they did not know the extent of any damages and confirmed that they had to move into the rental unit first, in order to determine the repairs and renovations to be completed.

I find that the landlords provided insufficient documentary and testimonial evidence to show that the tenants have not done required repairs of damage to the rental unit. The landlords did not provide a list of repairs to be done, when they requested the tenants to complete the repairs, and when the tenants failed to complete the repairs. The landlords testified that they did not know the extent of any damages and confirmed that they had to move into the rental unit first, in order to determine the repairs and renovations to be completed.

I find that the landlords provided insufficient documentary and testimonial evidence to show that the tenants knowingly gave false information to prospective tenants or purchasers of the rental unit. The tenant testified that she told a real estate agent that she believed the front of the house was the original miner's cabin but to ask the landlords for the exact date. The landlords did not dispute the above information, except to state that it was said to a viewer of the rental unit, rather than a real estate agent. I find that the tenant believed a fact to be true, relayed it to a viewer or real estate agent, and then told them to confirm the information with the landlords. I find that the above information does not constitute as "knowingly giving false information."

Accordingly, I grant the tenants' application to cancel the landlords' 1 Month Notice. The landlords' 1 Month Notice, dated April 18, 2022, is cancelled and of no force or effect. The landlords are not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

2 Month Notice

Subsection 49(3) of the *Act* sets out that landlords may end a tenancy in respect of a rental unit if the landlords or a close family member intend, in good faith, to occupy the rental unit.

According to subsection 49(8) of the *Act*, tenants may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenants received the notice. The tenants received the 2 Month Notice on April 27, 2022 and filed their application to dispute it on April 26, 2022, and updated it on April 29, 2022. The tenants' application is within the 15-day time limit under the *Act*. The onus shifts to the landlords to justify the basis of the 2 Month Notice.

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 find that the landlords had ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons explained below.

Landlord KW provided affirmed testimony that the landlords intend to complete repairs and renovations to the rental unit, sell it to new owners, and find a different and more suitable home to live. She provided affirmed testimony that the landlords previously listed the rental unit for sale and then removed the listing. The tenant provided affirmed testimony that a sale listing was posted by the landlords on April 5, 2022, prior to the 2 Month Notice being issued on April 18, 2022.

It is undisputed that the landlords did not issue a 2 Month Notice for sale of the rental unit, whereby the purchaser wants to occupy the rental unit. It is undisputed that the landlords did not apply for an order of possession at the RTB to complete renovations or repairs to the rental unit. I find that the landlords' intention is to complete renovations, repairs, and sell the rental unit, as per landlord KW's testimony at this hearing. I find that the landlords do not intend to occupy the rental unit for at least six months. Although landlord KW testified that the landlords would "probably" live in the rental unit for a "few years" because they had to remove the sale listing, I find that their intention is to find another more suitable place for their needs, as per landlord KW's testimony.

I also note that the landlords issued and served a 1 Month Notice to the tenants on the same date as the 2 Month Notice was issued and served to the tenants.

I find that the above issues demonstrate that there are conflicts and tensions between both parties in this tenancy, which questions the landlords' good faith intention for issuing the 2 Month Notice to the tenants.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their burden of proof to show that they intend to move into the rental unit in good faith.

Accordingly, the tenants' application to cancel the landlords' 2 Month Notice is granted. The landlords' 2 Month Notice, dated April 18, 2022, is cancelled and of no force or

effect. This tenancy continues until it is ended in accordance with the *Act*. The landlords are not entitled to an order of possession for landlords' use of property.

Filing Fee

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenants' application to cancel the landlords' 1 Month Notice is granted. The landlords' 1 Month Notice, dated April 18, 2022, is cancelled and of no force or effect. The landlords are not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

The tenants' application to cancel the landlords' 2 Month Notice is granted. The landlords' 2 Month Notice, dated April 18, 2022, is cancelled and of no force or effect. The landlords are not entitled to an order of possession for landlords' use of property. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenants to deduct \$100.00 on a one-time basis only, from future rent payable to the landlords for this tenancy, in full satisfaction of the monetary award for the 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: August 30, 2022

Residential Tenancy Branch