



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, RR, LAT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 49 cancelling a Two-Month Notice to End Tenancy signed on April 12, 2022 (the “Two-Month Notice”);
- a monetary order pursuant to s. 67 for compensation;
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- an order pursuant to s. 65 for a rent reduction; and
- an order pursuant to s. 70 permitting the Tenant to change the locks to the rental unit.

A.G. appeared as the Tenant. K.S. appeared as agent for the Landlord.

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 Landlord advised that the Two-Month Notice was served on the Tenant on April 12, 2022 via email. The Tenant acknowledges receipt of the Two-Month Notice on April 12, 2022 and raised no objection with respect to service via email. Pursuant to s. 71(2) of the *Act*, I find that the Landlord served the Tenant with the Two-Month Notice on April 12, 2022 as acknowledged by the Tenant at the hearing.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to

s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Tenant's Claims

The Tenant applies for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must 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 in the Tenant's application is whether the tenancy will continue, or end, based on the Two-Month Notice. Indeed, the Tenant's claims under s. 70 (authorization to change the locks), 62 (order that the Landlord comply), and 65 (future rent reduction) would be moot if the tenancy is over.

Pursuant to Rule 2.3, I sever the Tenant's claims under ss. 62, 65, 67, and 70. Regardless of the outcome, the Tenant's claims under s. 67 for monetary compensation and s. 65 for past rent reduction will be dismissed with leave to reapply. Whether the tenancy ends or continues will determine whether the balance of the Tenant's claims are dismissed with or without leave to reapply.

The hearing proceeded strictly on the enforceability of the Two-Month Notice.

Issues to be Decided

- 1) Should the Two-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires a party to present the evidence they submitted. At the outset of the hearing, I put the parties on notice to specifically refer me to evidence upon which they wish to draw my attention. 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 in mid-July 2021.
- Rent of \$2,000.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$1,000.00 in trust for the Tenant.

A copy of the tenancy agreement was put into evidence by the parties. The rental unit is main floor unit within a single detached home.

The Landlord's agent testified that the Two-Month Notice was issued as the Landlord intends to occupy the rental unit. The agent advised that the Landlord is her father and that he purchased the property in April or May 2021. The agent further advised that her parents currently live with her in her home and that her cousins have also moved in with her and her family such that there are currently too many people living in her home. I was told that it is the intention of her parents and her cousins to move into the rental unit.

The Tenant argues that the Two-Month Notice was issued in bad faith. The Tenant testified that the Landlord requested a rent increase that exceeded the amount permissible under the *Act*, then indicated that they would be selling the property, and then indicated that Landlord, his spouse and the agent's cousins would be moving into the house.

The Landlord's agent testified that the Landlord offered to withdraw the Two-Month Notice on the condition that the Tenant pay an additional \$400.00 or \$500.00 per month in rent. The agent indicated that the offer was extended both on the basis that the Tenant has three children and to provide additional income to the Landlord to pay for the mortgage.

Analysis

The Tenant seeks an order cancelling the Two-Month Notice.

Pursuant to s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice where the landlord or a close family member intends, in good faith, to occupy the rental unit. Section 49(1) of the *Act* defines a close family member as an individual's parents, spouse, or child or the parent or child of that individual's spouse. When a tenant receives a notice issued under s. 49(3) of the *Act*, they may either accept the end of the

tenancy or may file an application disputing the notice within 15 days of receiving it as required under s. 49(8).

In this instance, the Two-Month Notice was received on April 12, 2022 and the Tenant filed her application disputing the notice on April 27, 2022. I find that the Tenant filed her application disputing the Two-Month Notice on the last day permitted to her under s. 49(8).

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.

When a tenant files to dispute a notice under s. 49, the landlord bears the burden of proving that they intend to occupy the rental unit for at least 6 months and that they have no dishonest motive.

The Tenant argues that the Landlord is acting in bad faith when issuing the Two-Month Notice. The Tenant argued that the notice was issued due to financial considerations, principally rent. The Landlord's agent did not deny that the Landlord asked for a rent increase above that permitted under the *Act* prior to issuing the Two-Month Notice. Indeed, by the admission of the agent the Landlord had offered to withdraw the Two-Month Notice if the Tenant could pay an additional \$400.00 or \$500.00 per month in rent supports the Tenant's argument.

It is unclear why the Landlord and his wife, who purchased the property in the spring of 2021, would choose to move into the rental unit over a year later. The Landlord's agent was unclear where her parents were living prior to purchasing the property or how long they have been living with her in her home. There is no clear connection between the Landlord's personal circumstances and the issuing of the Two-Month Notice other than the cousins moving in with the Landlord's agent. However, I was provided with no evidence to suggest that the cousins were visiting or staying for a longer period. Further, the suggestion that the Two-Month Notice would be withdrawn if the Tenant paid more rent erodes whatever rationale the Landlord may have to move into the rental unit.

Policy Guideline #2A is clear that good faith requires evidence that an individual intends to do what they say they are going to do and that they do not have an ulterior purpose for ending the tenancy. Not only is there a clear connection between the Landlord's circumstances and the Tenant being served with the Two-Month Notice, but the agent also implicitly admitted that the Landlord is motivated in ending the tenancy, at least in part, due disputes regarding rent.

I find that the Landlord's agent failed to demonstrate the Landlord's good faith intention to occupy the rental unit. Accordingly, I grant the Tenant's application and 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*.

Conclusion

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

Those aspects of the Tenant's claim which were severed under Rule 2.3 of the Rules of Procedure, being claims under ss. 62, 65, 67, and 70, are all 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*.

Dated: August 30, 2022

Residential Tenancy Branch