



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDCT RP RR FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 2, 2022 ("2 Month Notice"), for a monetary claim of \$24,630.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for a rent reduction, for regular repairs to the unit, site or property, and to recover the cost of the filing fee.

On May 24, 2022, the hearing commences and after 60 minutes the hearing was adjourned. An Interim Decision was issued dated May 24, 2022 ("Interim Decision"), whereby I severed all unrelated items pursuant to RTB Rule 2.3 and made the decision to only address the 2 Month Notice and the filing fee at this proceeding. The Interim Decision should be read in conjunction with this Decision.

On September 20, 2022, the hearing reconvened and after an additional 59 minutes, the hearing concluded.

This Decision will be emailed to both parties who confirmed that their email addresses have not changed since May 24, 2022.

Issue(s) to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, should the filing fee be granted to the tenants?
- If no, should an Order of Possession be granted to the landlords?

Background and Evidence

The parties agreed that a month-to-month tenancy began in March 2018. The parties also agreed that as of February 2020, monthly rent was \$1,550. Rent is due on the first day of each month.

The tenants write in their application that they received the 2 Month Notice on February 2, 2022. The 2 Month Notice was submitted in evidence and is dated February 2, 2022. The effective vacancy date is listed as April 3, 2022, which has passed and automatically corrects under section 53 of the Act to April 30, 2022 as rent is due on the first day of each month.

The reason listed on the 2 Month Notice is as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="checked" type="checkbox"/>	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 close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input checked="checked" type="radio"/>	The father or mother of the landlord or landlord's spouse

While there was some discussion about pages 3 and 4 of the 4-page 2 Month Notice, it was confirmed during the hearing that pages 3 and 4 were served in the next day in February 2022. Given the above, I find there is no dispute that all 4 pages of the 2 Month Notice were received by the tenants.

The tenants have not vacated the rental unit since being served with the 2 Month Notice and continue to occupy it. The tenants filed their application to dispute the 2 Month Notice on February 15, 2022. The landlord provided the following testimony and documentary evidence in support of the reason listed on the 2 Month Notice.

Landlord SA, testified that the mother ("BS") and father ("HS")("Parents") of Landlord AS are the reason the 2 Month Notice was issued. The landlord described the Parents as having dual citizenship: Canadian and Indian. The landlord testified that the Parents are elderly and that is common in the Indian culture for elderly parents to live with their children in the same home.

The landlord testified that unrelated to the 2 Month Notice, they also had other family members ("Other Family Members") come to their home to stay in the landlord's portion of the, which does not include the rental unit. Photos of the Other Family Members were

reviewed. Those photos also show more than one mattress in a room and luggage. Counsel confirmed at the reconvened hearing that some of the Other Family Members have left since the first date of the hearing.

The landlord testified that the Parents have been at the home before and visited for approximately one month in February 2022. Landlord SA stated that their mother was admitted to hospital in India on March 6, 2022 and as a result, the Parents returned to India on March 9, 2022.

The tenants testified that repairs are the real reason why the landlords have served them with a 2 Month Notice, which the landlords vehemently deny. The landlords testified that they have responded to repair requests in a reasonable timeframe and have nothing to do with the Parents desire to move into the rental unit and live with their son and his family.

In support of their position, the landlord stated that on October 23, 2021, they were advised of hot water dripping, and the next day a plumber attended the rental unit, and the tenants were not home, so another date was scheduled. The landlord testified that in January 2020, the tenants complained about ants, and a pest control company was contacted in response to the ant concerns raised by the tenants. The landlord also referred to a receipt for the pest control in support of their testimony. In November 2020, the landlord stated that the dryer vent had an issue, so the landlords attended and applied duct tape to secure the vent in place to fix that issue. In October 2021, the tenants also complained about a ceiling leak and landlord AS fixed the leak and replaced a ceiling tile. The landlord stated that they are not attempting to avoid any repairs and claim there were no follow-up complaints from the tenants.

The raised the issue of mice in the rental unit, and again the landlords denied that mice were related to issuing a 2 Month Notice. The landlords testified that in October 2018 the tenants made the landlords aware of a mice issue and that over 12 mice were caught. Although the tenants claim the landlord has done little about mice other than installing sticky pads, the landlords deny that allegation by the tenants.

The landlord testified that the Parents are moving into the basement suite permanently and not just for a visit or on a temporary basis. The landlord testified at the reconvened hearing that the Parents are waiting in India before booking tickets to return until this Decision has been issued. Counsel explained that the Parents are waiting to make the basement suite their permanent residence and that doing so is customary in the East Indian culture. Counsel also reiterated that the visit of other family members in October

was never intended to reside in the basement suite and that the basement suite has always been reserved for the Parents. Counsel also submits that if the landlords wanted the tenants to move sooner, they would have issued a notice in 2018, which the landlords did not do. Counsel reminded the tenants that they have to deal with mice whether or not the tenants reside there, if the mice issue remains.

Counsel submits that there was a period of over six months where the tenants did not complain about mice at all and is not related to issuing the 2 Month Notice. Although the tenants claimed that there were verbal discussions about mice, the landlords denied that any stated that all communication was either by email or text. Counsel also submits that the lack of any written complaints means there were no complaints from the tenants.

The tenants stated that while they feel sorry for the grandparents passing away they feel the Parents were coming to Surrey from India for a visit only and were always planning to return to India based on their plane tickets showing a return ticket, submitted in evidence. The tenants' position is that the Parents came to Surrey for a visit and not to become tenants.

Counsel and the landlord reiterated that the basement suite is required as a space for the Parents, who are elderly and retired.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice – As noted above, the tenants write in their application that they received the 2 Month Notice on February 2, 2022. The 2 Month Notice is dated February 2, 2022 and the effective vacancy date is listed as April 3, 2022. Pursuant to section 53 of the Act, the effective vacancy date automatically corrects April 30, 2022 as rent is due on the first day of each month. April 30, 2022 has already passed.

As the tenants filed their application to dispute the 2 Month Notice on February 15, 2022, I find the tenants filed their application within the 15-day timeline provided under section 49(8)(a) of the Act.

The reason indicated on the 2 Month Notice is "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of

the landlord or the landlord's spouse - The father or mother of the landlord or landlord's spouse."

While the tenants raised the issue of bad faith by alleging that the 2 Month Notice was issued after a request for repairs was made and a ceiling leak, I have considered all of the evidence before me from both parties and find that the tenants have provided insufficient evidence to support that the 2 Month Notice was issued in bad faith. I have reached this finding as I find the landlord provided consistent testimony regarding the intentions of the Parents, which was also supported by the submissions of counsel. I also find that there was insufficient evidence of verbal discussions of repairs as claimed by the tenants, and that I prefer the testimony of the landlords that all repairs or issues related to the rental unit were either dealt with via email or text and were addressed in writing versus orally. I have reached this finding as the evidence before me support the landlords' version of events, and not the tenants' version of events.

I afford considerable weight to the testimony of the landlord and the submissions of counsel that it is customary in the East Indian culture for retired, elderly parents to move in with their children at the later stages of their parents' life. Therefore, I find the landlord has provided sufficient evidence to support that the 2 Month Notice was issued in good faith with no ulterior motive.

Based on the above and on the balance of probabilities, I find that the landlords have met the burden of proof and I find the 2 Month Notice issued by the landlords to be valid. Therefore, **I dismiss** the tenants' application to cancel the 2 Month Notice and **I uphold** the 2 Month Notice. As this Decision is dated September 28, 2022, I find it would be unfair to the tenants to have to vacate the rental unit in a matter of two days and accordingly, I am using my authority under section 62(3) of the Act to grant an order of possession for a later date, **October 31, 2022 at 1:00 p.m.**

I find the tenancy ended on April 30, 2022, the corrected effective vacancy date.

As the tenants' application has failed, I decline to grant the filing fee.

Conclusion

The tenants' application to cancel the 2 Month Notice is dismissed. The 2 Month Notice issued by the landlords is upheld.

The landlords are granted an order of possession effective October 31, 2022 at 1:00 p.m. Pacific Time. The order of possession must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The tenants are reminded that they could be held liable for all costs related to enforcement of the order of possession if they fail to vacate by October 31, 2022 at 1:00 p.m.

The tenancy ended on April 30, 2022.

This Decision will be emailed to both parties.

The order of possession will be emailed to the landlords only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 28, 2022

Residential Tenancy Branch