



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

The Tenant applies to cancel a Two-Month Notice to End Tenancy signed on April 25 (the “Two-Month Notice”) pursuant to s. 49 of the *Residential Tenancy Act* (the “Act”).

W.S. appeared as the Tenant and was joined by N.M. as her advocate. M.M. appeared as 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 testified to having served the Two-Month Notice, though was unclear on how or when that was done. The Tenant acknowledged receipt of the Two-Month Notice on April 28, 2022. Based on the Tenant’s acknowledgment, I find that pursuant to s. 71(2) of the *Act* that the Two-Month Notice was served on the Tenant and received on April 28, 2022.

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 Witness

A.Z. attended at the outset of the hearing and was identified as the Tenant's witness. I was advised that A.Z. could provide translation of a recording put into evidence by the Tenant and had some direct knowledge of the matters in dispute. I requested that she disconnect until called upon to provide evidence by the Tenant.

The Tenant did not call A.Z. as a witness during her initial submissions instead attempting to do so during her final rebuttal. I did not permit the Tenant to call A.Z. as a witness under those circumstances. It is inappropriate to call a witness during final submissions at the end of the hearing. To do so would negate the other side's ability to provide a response as they had already concluded their submissions.

Though I did not discuss this at the hearing, I also have concerns with respect to calling a witness, who appeared to be the Tenant's friend, to act as a translator to an audio recording she received from the Tenant. A.Z. did not identify herself as a certified translator. I question the weight to be given to evidence from an uncertified translation of a recording from a third-party witness.

In any event, the Tenant failed to call A.Z. as a witness during her initial submissions and I did not permit her to do so at the end of the hearing in her closing submissions.

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. 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 regarding the tenancy:

- The Tenant took occupancy of the rental unit on August 1, 2021.
- Rent of \$1,300.00 is currently payable on the first day of each month.
- The Tenant paid a security deposit of \$650.00.

A copy of the tenancy agreement was put into evidence by the Tenant. The subject rental unit is a basement suite within a detached home.

The Landlord testified that she and her husband purchased the property recently, having taken possession of it on December 16, 2021. The Landlord indicated that she and her family live upstairs from the Tenant.

The Landlord testified that when they purchased the property, they had asked their realtor to get vacant possession of the rental unit. I am told by the Landlord that their realtor spoke with the Tenant, who indicated that she would be moving in February or March 2022. The Landlord indicates that they agreed not to issue a notice to end tenancy at that time on the understanding that the Tenant would be leaving in the spring.

According to the Landlord, they need the rental unit because her parents will be moving into the suite. It was explained that her parents are in another country and would be staying with her and her family indefinitely. I was told that the Landlord's father intends to come to Canada as soon as he receives his visa and that her mother first plans on visiting the Landlord's brother in another country before coming to Canada. The Landlord confirmed that no plane tickets have been purchased.

The Landlord advised that her parents are elderly and that there are many stairs leading into the main part of the house such that the basement is more accessible. The Landlord further testified that there was an intention to potentially renovate the basement by converting it into a 3-bedroom suite, though no permits have been taken out at this point.

The Tenant argued that the Two-Month Notice was not issued in good faith. The Tenant testified that the Landlords have at various times requested additional rent from her. I was told by the Tenant that she had, in fact, signed a new tenancy agreement with the Landlord M.M. in February 2022 in which the term was for one-year and rent was to be payable in the amount of \$1,400.00. The Tenant indicates that the Landlord M.M. took the tenancy agreement she had signed to her husband to have him sign off but did not receive a copy.

The Tenant's evidence includes a text message dated February 2, 2022, which is identified as being sent by the Landlord. It states the following:

Hi

Just to remind you that we don't have any rental agreement and giving you notice to vacate the suite in one month

Thanks

A further text message in the Tenant's evidence, which is undated, indicates the following message was sent by the Landlord M.M.:

Hi

Till the time [the Landlord's husband] and me not signed the rental agreement that is not completed so we have no any rental agreement yet [the Landlord's husband] already denied to sign any agreement with you.

And we don't want to sign anymore

So this is ur final notice to vacate the rental suite as early as possible

So we r giving you timeline to leave the basement suite till the end of February 28th so you still have more than one month

We need suite for out own use

And pls don't bother us again and again mind ur time to locate other location

Don't disturb us

Hope not to hear anything from you now

Thanks

I have redacted personal identifying information from the reproduction above.

The Landlord did not deny offering a new tenancy agreement to the Tenant but indicates that the document that was signed was conditional on their sign off. The Landlord emphasized that she was trying to help the Tenant by extending the term of the tenancy. I was told by the Landlord that her husband refused to sign of the new tenancy agreement.

The Tenant further testified to a conversation between her and the Landlords on July 14, 2022 in which she was told that they would be marketing the space under Airbnb and that they would be willing to withdraw the Two-Month Notice if the Tenant agreed to pay \$2,000.00 per month in rent.

When I enquired with the Landlord about the Tenant's allegations regarding the July 14, 2022 conversation, the Landlord admitted that she would potentially list the space on

Airbnb, though emphasized that this was because her father's entry into Canada had not yet been finalized. The Landlord failed to respond or deny the allegation that they had offered to withdraw the Two-Month Notice if the Tenant agreed to pay \$2,000.00 per month in rent.

The Tenant's evidence includes another text message from the Landlord M.M., which is undated, following an inquiry from the Tenant about the internet. It states the following:

No point working in that suite so need to check all suites today
This is our new house and we need to make soo many technical and other changes
And everyone need to cooperate
And I will send you notice again 1st Feb again
And next month the people vll come to see the suite for March renting position so give me ur availability for days and times

Both the Landlord and Tenant testified to a level of conflict between them. Both allege harassment from the other. The nature of the parties' personal conflict is not relevant to this application.

Analysis

The Tenant applies to cancel 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).

Section 49(7) of the *Act* requires notices issued under s. 49 to comply with the form and content set out under s. 52. Section 52 of the *Act* states the following:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,

- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

(Underline added)

I have reviewed the Two-Month Notice. Though it complies with most of the form and content requirements set under s. 52, it does not state the grounds upon which it was issued. The second page of the standard form includes a series of boxes to be checked off. None of them were. I find that the Two-Month Notice fails to comply with s. 52 and is not an effective notice under s. 49.

Though not strictly necessary given my finding above, the Two-Month Notice was argued to have been issued on the basis of the Landlord's parents occupying the rental unit. Section 49 requires a landlord to show the good faith intention 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 Tenant indicates that there were various instances in which the Landlords have requested additional rent, which included the purported signing of a new tenancy agreement for additional rent in February 2022. The Landlord confirmed that the hearing that a new tenancy agreement was offered but that it had not been finalized. The Tenant's text messages confirm an agreement was put forward in February 2022.

The Tenant testified that the Landlords offered on July 14, 2022 to withdraw the Two-Month Notice if the Tenant agreed to pay \$2,000.00 per month in rent, representing an increase of \$700.00 over what is currently paid. The Landlord did not deny this at the hearing despite my clearly putting that question to her. I draw an adverse inference from the Landlord's failure to respond to the Tenant's allegation regarding the rent increase demand on July 14, 2022. This clearly demonstrates that they Landlords are not motivated for ending the tenancy due to the occupancy of the rental unit by the parents. Further, there is indication in one of the text messages that the Landlords were looking to re-rent the unit in March 2022 based on the purported "notice" to vacate by the end of February 2022.

The text messages indicate a cavalier attitude by the Landlords with respect to their obligations under the tenancy agreement, which they inherited upon the purchase of the property. The correspondence demonstrates that the Landlords had intimated on that they did not have an agreement together and that the Landlords felt they were able to end the tenancy via text message on a one-month basis without giving any reason for doing so. This type of conduct by the Landlords is entirely unacceptable and demonstrates a clear misapprehension of their obligations under the *Act*.

The Landlord admitted at the hearing that her father has not booked a ticket to come to Canada, this despite the effective date of the Two-Month Notice being set for June 30, 2022. Presumably, had the notice been effective on June 30, 2022, the father would have had tickets purchased or arrived on or around June 30, 2022. The Landlord admitted that her father's visa had not been finalized. The Landlord admitted she intended to list the property on Airbnb on a short-term basis waiting for her father to arrive. The Landlord further admitted to plans to renovate the rental unit.

It is entirely incongruous to offer a one-year tenancy agreement in February 2022 then argue that the tenancy needs to end on June 30, 2022 as the Landlord's parents would be occupying the space. Overlayed with this is the Landlords' cavalier attitudes regarding their obligations and various demands for additional rent. Further, the Landlord admitted at the hearing that she would be letting the property out for short-term rentals and renovating the rental unit, both of which are in clear contravention of the stated purpose for ending the tenancy in the Two-Month Notice. There is further evidence to suggest that the Landlords intended to find a new tenant for the rental unit in March 2022.

I have little difficulty in finding that the Landlord has failed to demonstrate the good faith intention of their parents to occupy the rental unit. There appears to be very clear ulterior motives, some of which are admitted by the Landlord. I grant the Tenant's application cancelling 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*

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: September 02, 2022

Residential Tenancy Branch