



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1098010 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC, MNDCT, RP, LRE, AS, AAT, FFT

Introduction

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

- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, dated May 31, 2022 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- a monetary order of \$450.00 for compensation under the *Act*, *Regulation*, or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to make repairs to the rental unit, pursuant to section 33;
- an order to suspend or set conditions on the landlords' right to enter the rental unit, pursuant to section 70;
- an order allowing the tenants to assign or sublet because the landlords' permission has been unreasonably withheld, pursuant to section 65;
- an order to allow access to or from the rental unit for the tenants or their guests, pursuant to section 70; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

Landlord AG ("landlord") and the two tenants, tenant SS ("tenant") and "tenant SJ" 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 45 minutes from 1:30 p.m. to 2:15 p.m.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord stated that the landlord company named in this application owns the rental unit. He said that he owns the company. He provided the rental unit address.

The tenant identified herself as the primary speaker for both tenants at this hearing and tenant SJ agreed to same.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision.

I cautioned the tenants that if I dismissed their application without leave to reapply, I would uphold the 2 Month Notice, end this tenancy, and issue a two (2) day order of possession against them. The tenants affirmed that they were prepared for the above consequence if that was my decision.

I cautioned the landlord that if I cancelled the landlords’ 2 Month Notice, I would not issue an order of possession against the tenants and this tenancy would continue. The landlord affirmed that he was prepared for the above consequence if that was my decision.

The landlord confirmed receipt of the tenants’ application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both landlords were duly served with the tenants’ application.

The tenant confirmed receipt of the landlords’ evidence. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords’ evidence.

The tenant said that the landlords’ evidence was late, since it was received by the tenants on October 3, 2022. I informed the tenants that I would consider the landlords’

evidence at the hearing and in my decision because it was received and reviewed by them. I informed the tenants that the landlords' evidence was not late, since it was received by the tenants on October 3, 2022, which is more than 7 days prior to this hearing on October 14, 2022, in accordance with Rule 3.15 of the RTB *Rules*.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add the name of the landlord and the landlord company as landlord-respondent parties. The tenants originally included only the landlord's personal company as a landlord-respondent party, which the landlord said does not own the rental unit and is not a landlord for this tenancy. Both parties consented to the above amendments. I find no prejudice to either party in making these amendments.

The tenant confirmed receipt of the landlords' 2 Month Notice on June 3, 2022, by way of registered mail. The landlord stated that he served the notice to the tenants on June 3, 2022, by way of registered mail and by leaving a copy in the tenants' mailbox. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' 2 Month Notice on June 3, 2022.

Preliminary Issue – Severing a Portion of the Tenants' Application

The following RTB *Rules* are applicable and state (my emphasis added):

2.3 Related issues

*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.***

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

At the outset of this hearing, I informed both parties that Rules 2.3 and 6.2 of the RTB *Rules* allow me to sever issues that are not related to the tenants' main urgent

application. The tenants applied for 8 different claims in this application, and I dealt with 2 of them at this hearing.

I informed the tenants that they were provided with a priority hearing date, due to the urgent nature of their application to cancel the landlords' 2 Month Notice. I informed them that this was the central and most important, urgent issue to be dealt with at this hearing. After 45 minutes in this hearing, there was insufficient time to deal with the tenants' remaining 6 claims, as the maximum time for this hearing is 60 minutes.

I notified the tenants that the remaining 6 claims in their application was dismissed with leave to reapply. I informed them that their remaining claims, including their monetary claim, were non-urgent lower priority issues, and could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. I notified them that they could file a new application, if they want to pursue their remaining claims in the future. The tenants confirmed their understanding of same.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession for landlords' use of property?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, 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.

The landlord and the tenant agreed to the following facts. This tenancy began on September 12, 2019. Monthly rent in the current amount of \$2,230.00 is payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenants and the landlords continue to retain this deposit in full. Both parties signed a written tenancy agreement. The tenants continue to reside in the rental unit.

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

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 August 1, 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 child of the landlord or landlord's spouse.*

The landlord testified that his son wants to move into the rental unit.

The tenant testified regarding the following facts. This is "frivolous, retaliatory," and a "vexatious abuse" of the *Act* and the RTB process. The landlord was facing a Human Rights Tribunal ("HRT") complaint regarding this tenancy from the tenants. On April 25, 2022, the landlord's son came to the rental unit to try to fix the kitchen sink. The tenant asked him why he would not live in the area of the rental unit. The landlord's son told the tenant: "I'm a brown kid, why would I live in Langley, I live in Surrey." The landlord's son told the tenant that he still lives at home. The landlord owns 3 units in that complex. One is the rental unit, which is half of a duplex. The other is a full duplex with 2 separate units. All the units are located in the same complex. The landlord has engaged in "misogynist" and "sexist" behaviour against the tenants. The landlord does not want to deal with any more complaints or maintenance issues. It is the landlord's responsibility under the *Act* to deal with the furnace breakdown. The landlord says that \$25,000.00 is owed for the improved appearance of the place. The tenants do not believe that the landlord's son wants to live at the rental unit. Why has the landlord's son not come to the hearing to testify about his intentions? That speaks volumes that he did not attend this hearing. The landlord's son is a grown adult man, so he should be testifying at this hearing. The landlord did not issue the 2 Month Notice in good faith. The landlord lost his eviction attempt at a previous RTB January 2021 hearing. This is the second attempt in less than 18 months by the landlord to evict the tenants. The landlord will do anything to evict the tenants because they invoked their rights under the *Act* and the HRT. The tenants' next door neighbor, who is the landlord's tenant, was afraid to testify because they thought they would get in trouble.

Tenant SJ testified regarding the following facts. She was present when the landlord's son came to fix the kitchen sink on April 25, 2022. She heard the landlord's son say that he would never live there at the rental property.

The landlord stated the following in response. He has a police file number against the tenants. He did not provide a police report. The tenants bring “drug-addicted and homeless people” to the rental unit. The police come to the rental unit every second day. The landlord's son is quiet and does not say anything, so the tenants are lying about what he said to them. The landlord always serves what he has to. If the tenants are not happy, he tries to make everyone happy, and not be involved in “anger, hate or racism.” The tenants always bring the landlord to the RTB every three months and never win, and he has spent a lot of time at the RTB. The tenants blame the landlord, but he has “respect” and has not said anything against the tenants. He needs the rental unit vacated for his son. The house has lots of damage. Everything the tenants said was a lie and incorrect. The tenants need to remove the fence as soon as possible because it is a bad case for the insurance company and it is on the fire line, so it is a fire hazard.

The tenant stated the following facts in response. The landlord lost the January 2021 RTB hearing. The landlord agreed for the tenants to put up a fence at the rental property and he is now saying that it is a fire hazard.

Analysis

Burden of Proof

As noted below, the landlords have the burden of proof, on a balance of probabilities, to prove the reason for issuing the 2 Month Notice to the tenants. The *Act*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlords to provide evidence of the reason on the 2 Month Notice.

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.*

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.

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 their 2 Month Notice, since they chose to issue it 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 landlord failed to

properly go through his reasons and evidence for issuing the 2 Month Notice to the tenants.

This hearing lasted 45 minutes, so the landlord had ample time to present his evidence and respond to the tenants' submissions. I repeatedly asked the landlord if he had any other information to present and if he wanted to respond to the tenants' submissions.

Findings

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 intends, 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 claimed that they received the 2 Month Notice on June 3, 2022, and filed their application to dispute it on the same date. 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.

The tenant provided affirmed testimony that the landlord already attempted to evict the tenants at a previous RTB hearing in January 2021, that the tenants filed a human rights complaint against the landlord at the HRT, and that the tenants reported repair and maintenance issues to the landlord at the rental unit. The landlord did not dispute the above information during this hearing.

The landlord provided affirmed testimony that he has other issues with the tenants, claiming that the police attend at the rental unit often, the landlord has police file numbers, there are drug-addicted and homeless people at the rental unit due to the tenants, and that there are damages and fire hazards at the rental unit, due 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.

As noted above, both parties were given an opportunity to call witnesses at this hearing. The landlord's son did not attend this hearing to provide testimony or evidence. The landlords did not provide a letter from the landlord's son, as evidence for this hearing. The landlord's son did not provide written or testimonial evidence that he intends to move into the rental unit in good faith, when he wants to move in, or why he wants to move into the tenants' specific rental unit, as opposed to another unit. Both tenants

provided affirmed testimony that the landlord's son told them that he would not live at the rental unit, the same complex, or the same city, and that he lived at home with his family. The landlord denied the above statement by his son but did not produce his son as a witness at this hearing or provide a written statement from his son regarding same.

During this hearing, the tenant repeatedly questioned why the landlord's son did not attend this hearing and provide affirmed testimony that he wanted to move into the rental unit. The landlord did not respond to this at all, despite being given multiple opportunities for same.

The tenants provided affirmed testimony that the landlord owns two other units in a duplex in the same complex and area as the rental unit. The landlord did not dispute same, nor did he indicate why his son could not move into another comparable unit, in the same area, rather than the rental unit.

As noted above, it is the landlords' burden of proof to show that the landlord's son intends to move into the rental unit in good faith, as this was reason they said they issued 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 their son intends 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 May 31, 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.

As the tenants were partially successful in their 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' 2 Month Notice is granted. The landlords' 2 Month Notice, dated May 31, 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.

I order the tenants to reduce \$100.00 on a one-time basis only, from their future rent payable to the landlords for this tenancy, in full satisfaction of the monetary award for the filing fee.

The remainder of the tenants' application 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*.

Dated: October 20, 2022

Residential Tenancy Branch