



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, DRI, CNL-MT; OPL**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- Cancellation of a Notice of Rent Increase pursuant to section 43;
- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- More time to cancel a Notice to End Tenancy pursuant to section 66

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order of possession under a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to sections 49 and 55;

The agent CB attended for the landlord and provided a letter of authorization. The tenant attended the hearing 5 minutes after it started. Both parties were

granted the opportunity to submit evidence. The hearing process was explained, and questions answered.

Preliminary issues are addressed.

1. Service by Tenant

The tenant testified they served the landlord with their evidence on June 24, 2022. The landlord acknowledged service. Further to the parties' testimony, I find the tenant served the landlord in compliance with the Act.

2. Service by Landlord

The landlord testified they served the tenant with the Notice of Hearing and Application for Dispute Resolution on July 13, 2022, by posting to the tenant's door and by sending to the tenant's email address. The landlord acknowledged that the documents did not include copies of the evidence.

The tenant objected to the consideration of the landlord's evidence which had not been provided to him. As the evidence was not properly served, it is not considered in my Decision.

3. Inappropriate Behaviour by the Tenant during Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the

dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the hearing, the tenant interrupted, spoke at the same time as me, and argued with me and the landlord. I repeatedly asked the tenant not to talk over me and not to interrupt when someone was speaking. My requests and warnings had no effect. The tenant replied that the landlord was allowed to say anything, so why wasn't he?

The tenant kept providing irrelevant evidence despite my repeatedly informing the tenant it was immaterial. The tenant ignored my directions and repeated the testimony, asked the same questions of the landlord or argued with me.

The tenant informed me I was coercing him. If I granted the landlord an Order of Possession, I was effectively rendering him unemployed and homeless.

I informed the parties the time scheduled for the hearing was 1 hour. The hearing took longer at 75 minutes because of the repeated interruptions and disruptive behaviour by the tenant.

4. Settlement Discussions

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The Arbitrator assisted the parties in efforts to settle the matter. Settlement discussions were unsuccessful, and the hearing continued.

5. Dismissal of Tenant's Claims

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether the tenancy continued.

Section 2.3 of the *Rules of Procedure* states that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As a result, I exercised my discretion to dismiss, with leave to reapply, all of the tenant's claims except for the claim to cancel the Two Month Notice.

As I have dismissed the tenant's claims with leave to reapply, the only issue before me is the application by the tenant to cancel the Two Month Notice and an application by the landlord for an Order of Possession pursuant to the Notice.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Two Month Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed the Agent lives in the building in which the tenant also resides. The landlord lives in a separate, adjacent building.

A copy of the tenancy agreement was submitted, and the parties agreed on the following particulars:

INFORMATION	DETAILS
Type of Tenancy	month-to-month

Beginning Date	January 1, 2020, changed units August 1, 2020
Rent payable on first of month	\$700.00
Security deposit	\$350.00

The parties agreed the landlord issued a Two Month Notice and the particulars are:

INFORMATION	DETAILS
Type of Notice	Two Month Notice
Date of Notice	May 30, 2022
Effective Date of Notice	July 31, 2022
Date and Method of Service	Attached to door and sent by Email May 30, 2022 Effected June 2, 2022
Effective Date of Service	Acknowledged by tenant , effective June 2, 2022
Reasons for Issuance	Unit to be occupied by child of landlord or landlord's spouse
Application for Dispute Resolution filed - date	June 16, 2022, within time

Tenant's Dispute of Notice

The tenant testified as follows. They did not believe the landlord issued the Notice in good faith for the following main reasons:

1. The tenant complained about repairs needed and noise.
2. The tenant refused to pay an illegal rent increase.

3. The landlord's son is not moving in.

The tenant testified many repairs were needed in the building including repairs to the furnace, pest control and water leaks. As well, there were many sources of disturbing noise in the building: the landlord's young granddaughter, the neighbours and the malfunctioning furnace. The furnace was particularly unsettling as it sounded "like a chainsaw" when it started. The landlord did nothing to resolve the situations.

The tenant testified that the landlord requested an unlawful rent increase of \$25.00 on April 1, 2022 and an additional \$25.00 on April 14, 2022. When he did not comply, the landlord issued a Two Month Notice on May 30, 2022.

The tenant expressed doubt the landlord's son was moving in as the son had married and moved out some years earlier. Also, the tenant did not believe the landlord issued the Notice in good faith but intend to re-rent the unit for a higher price.

The tenant also testified that their health and employment issues made moving difficult and onerous.

Landlord's Replay and Claim for Order of Possession

The landlord testified as follows.

The landlord acknowledged the tenant repeatedly complained about many conditions in the building and the tenant wanted the noisy furnace repaired or replaced. However, the landlord did not act on the complaints because no one else in the building complained about the same things. As well, other occupants complained about various aspects of the tenant's behaviour.

The landlord explained that they were unfamiliar with the proper procedure to raise the rent. When they learned how to do it, they withdrew the requests for increases of rent sent to all the building occupants, not just the tenant. They denied that they suddenly decided to evict the tenant. The landlord testified they

verbally mentioned to the tenant several times in the months before issuing the Notice that the landlord was increasingly unwell and she wanted her only child to come and live near her.

The landlord explained that the landlord's son lives in the same municipality as the landlord. While he did move out as he married, the son has subsequently divorced and has agreed to move back in with the landlord to help her.

The Agent explained the landlord is "old and sick" and her health is declining. The Agent testified the landlord wanted her son nearby to help her. The tenant's unit is the most suitable one as it has a private bathroom. The son intended to move in several months ago but has been delayed by the tenant's Application for Dispute Resolution. The son is waiting to move in.

In summary, the landlord submitted that the Two Month Notice was issued in good faith. The landlord hopes her son can move in soon, so he can support her by living in the adjacent building. They do not have any ulterior motive such as getting rid of a troublesome tenant, retaliation for complaints, or not paying the rent increase which they acknowledge was in error.

Tenant's Reply

The tenant requested that if an Order of Possession were issued, the effective date be November 30, 2022.

Summary

The tenant requested the Two Month Notice be cancelled and the tenancy continued.

The landlord requested an Order of Possession on 2 days notice.

Analysis

Credibility

Given the conflicting testimony, I have considered credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Considering the testimony and evidence in its totality, I find the landlord's submissions to be persuasive, credible, and forthright. The landlord provided consistent, logical, testimony which I find has a ring of truth.

I acknowledge that the tenant disagreed with the landlord's evidence. He vehemently argued that the landlord wants to get rid of him because he complained too much and would not pay an increase in rent that was not properly requested.

However, I do not find the tenant's submissions to be persuasive. As stated several times by the tenant, I find he is afraid of losing affordable housing at a difficult time in his life. He fears homelessness and loss of his job. I find these are the motivations in the application to cancel the Notice, and not because there is any lack of good faith on the landlord's part in the issuance of the Notice.

Based on the foregoing, I prefer the landlord's evidence to the tenant's version of events. I accept the landlord's testimony in its entirety. I find the landlord credible in wanting her son to come and live nearby for health and age reasons.

For these reasons, where the evidence of the parties conflict, I prefer the landlord's version. I do not give much weight to the tenant's evidence.

The Act

Section 49 of the Act allows a landlord to end a tenancy on a date that is not earlier than 2 months after the date the tenant receives the notice or if the tenancy is for a fixed term not earlier than the date specified as the end of the tenancy in the agreement, if they, in good faith, plan to move into the rental unit.

The tenant questioned the good faith of the Notice for the reasons canvassed earlier. The tenant also testified that their health issues made moving difficult and onerous.

Residential Tenancy Branch Policy Guideline number #2 examines the issue of ending a tenancy for landlord's use of property.

The Guideline notes that *good faith* is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenant has disputed the good faith intention of the landlord, which I find has no basis given the evidence of the landlord which I find credible and reliable. I found no evidence supporting the tenant's claim of bad faith other than the conjecture that the true motivation was the tenant's complaints, the rejection of the rent increase, and the unsupported belief the landlord's son will not move in.

I find the tenant has paid rent to the end of October 2022.

The landlord submitted credible testimony supporting the landlord's claim that the son of the landlord intended to occupy the unit. I find the evidence convincing. I accept the landlord's evidence in all aspects. I find the landlord's evidence shows honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. I accept that the son wants to live in the unit to be near the landlord who is unwell.

As noted above in Policy Guideline #2, "If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy." I find that the landlord has met the burden of proof on a balance of probabilities that her good faith intention is for the son to live in the unit.

Therefore, I dismiss the tenant's application to cancel the Two Month Notice.

Order of Possession

Section 55(1) provides that the director must grant the landlord an Order of Possession if the landlord's Notice complies with section 52 (form and content) and the tenant's application is dismissed.

I find the Notice complied with section 52. I have dismissed the Notice. I therefore grant an Order of Possession.

Effective Date

I have considered Policy Guideline #54 *Ending a tenancy: Orders of Possession* which discusses the effective date to end a tenancy:

Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
 - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition

I have considered the testimony of the tenant regarding health and employment considerations. I find the tenant has paid rent until the end of October 2022 in a relatively short-term tenancy. While I accept the landlord's assertion that any

delay is inconvenient, I find this is a situation to exercise my discretion and to award an Order of Possession effective November 30, 2022.

I grant the landlord an Order of Possession effective November 30, 2022, at which time the tenant and occupants must provide vacant possession to the landlord. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Court of British Columbia.

Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

I grant the landlord an Order of Possession effective November 30, 2022 at which time the tenant and occupants must provide vacant possession to the landlord.

Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Court of British Columbia.

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 24, 2022

Residential Tenancy Branch