



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, RR, LRE, OLC, FFT

Introduction

This hearing dealt with the tenant's application, filed on June 24, 2022, 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 June 10, 2022 ("2 Month Notice"), pursuant to section 49;
- a monetary order of \$5,800.00 for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order to allow the tenant to reduce past rent of \$18,400.00 for repairs, services, or facilities agreed upon but not provided, pursuant to section 65;
- an order to restrict the landlords' right to enter the rental unit, pursuant to section 70;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two landlords (collectively "landlords"), the landlords' agent, and the tenant 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 69 minutes.

This hearing began at 11:00 a.m. with me and the tenant present. The two landlords and their agent called in late at 11:02 a.m. The two landlords and their agent disconnected from this hearing from 11:10 to 11:12 a.m. This hearing ended at 12:09 p.m.

The landlords' agent confirmed the names and spelling for herself and the two landlords. The tenant confirmed her name and spelling. The tenant provided her email address for me to send this decision to her.

The landlords' agent confirmed that she had permission to represent both landlords, who are her parents, at this hearing. She stated that she would also be assisting the landlords with English language translation. She identified herself as the primary speaker for both landlords at this hearing.

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.

At the outset of 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, which I answered. I informed both parties that I could not provide legal advice to them. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they did not want to settle this application, they were ready to proceed with this hearing, and they wanted me to make a decision. Both parties were given multiple opportunities to settle and chose not to do so. Both parties were given additional time during this hearing but did not settle this application.

I cautioned the tenant that if I dismissed her application without leave to reapply, I would uphold the landlords' 2 Month Notice, end this tenancy, and issue a two (2) day order of possession against her. She confirmed that she was prepared for the above consequences if that was my decision.

I cautioned the landlords' agent that if I cancelled the landlords' 2 Month Notice, I would not issue an order of possession to the landlords against the tenant and this tenancy would continue. The landlords' agent confirmed that both landlords were prepared for the above consequences if that was my decision.

The landlords' agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that both landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence.

The landlords' agent stated that the tenant was personally served with the landlords' 2 Month Notice on June 12, 2022. The tenant confirmed the above service method and date. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlords' 2 Month Notice on June 12, 2022. The tenant confirmed that she filed this application on June 24, 2022, to dispute the notice.

Preliminary Issue – Severing the Tenants' Monetary 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 tenant's main urgent application and the tenant applied for 6 different claims in this application.

I informed the tenant that she was provided with a priority hearing date, due to the urgent nature of her application to cancel the landlords' 2 Month Notice. I informed her that this was the central and most important, urgent issue to be dealt with at this hearing. After 69 minutes in this hearing, there was insufficient time to deal with the tenant's monetary claims, as the maximum time for this hearing was 60 minutes.

I notified the tenant that her monetary claims, totalling \$24,200.00, were dismissed with leave to reapply. I informed her that they 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 her that she could file a new application and pay a new filing fee, if she wants to pursue these claims in the future. She affirmed her 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?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order to restrict the landlords' right to enter the rental unit?

Is the tenant entitled to recover the filing fee 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 tenant's claims and my findings are set out below.

The landlords' agent and the tenant agreed to the following facts. This tenancy began on April 1, 2021 for a fixed term of one year, after which it became a month-to-month tenancy. Monthly rent in the current amount of \$1,150.00 is payable on the first day of each month. A security deposit of \$575.00 was paid by the tenant and the landlords continue to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The rental unit is the basement suite of a house, where the landlords live in the upper suite of the same house, with their daughter, the landlords' agent.

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 September 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 landlords' agent stated the following facts. She is the daughter of the landlords and intends to move into the rental unit after the tenant vacates. She provided a letter, dated October 29, 2022, from her psychologist doctor. Her doctor said that it was healthier for her family to live apart to establish boundaries. The suggestion to live on her own was made before the end of the tenant's fixed term tenancy. On March 17, 2022, she raised the issue with her doctor to live in the basement suite of the house, for her own independence and her doctor agreed. The landlords decided not to renew the tenant's contract after the fixed term tenancy ended anyway. She has been in therapy with her doctor and needs healthier physical boundaries with her parents. She intends to live at the rental unit long-term, indefinitely, for five years. The other basement suite at the house is occupied by her mother's parents, who are currently out of town, dealing with family matters. The landlords want to keep the other basement suite free for her mother's parents because they normally live there, and they do not know when they will return. There are no other options for the landlords' agent to live elsewhere because she cannot pay rent, as she is a full-time student and works two jobs. The rental unit will be free and she will not be required to pay rent to her parents, so she will be financially able to live there. The noise from living with her parents disturbs her during her studies and she needs quiet.

The tenant testified regarding the following facts. She does not think that the landlords' daughter will occupy the rental unit. The landlords do not want to make repairs to the rental unit. The other basement suite at the house has been vacant since last September. The basement floor plan provided by the landlords as evidence, does not show the kitchen but she has seen a kitchen in the other basement suite. The previous occupants lived there for five years, and the landlords wanted a longer tenancy. If she knew the landlords only wanted her to live at the rental unit for one year, she never would have moved in. The landlords are required to maintain the rental unit and the primary heating system issues are an emergency repair under the *Act*, since "experts" told her this. She has not filed any previous or current RTB applications for regular or emergency repairs. She is a "big person" and she has a "busy big life," so she did not have time to file any RTB applications for emergency repairs. She did not know that she had to check off a box for emergency repairs, as she did not see it on the RTB application system, when she applied. The landlords fixed the heating issue in September 2022 and the noise stopped. Her right to quiet enjoyment was disturbed by the noise all day and night, relating to the heating system. She missed work because of it. The landlords are not acting in good faith. They only provided three receipts for rent payments. The landlords have "humiliated" and "intimidated" the tenant. Why does the

tenant have to leave the rental unit when there is another empty unit beside her in the basement. She has been complaining for one year regarding the heat and she has not slept, so she thought this was sufficient for emergency repairs and she did not have to file an RTB application.

The landlords' agent stated the following facts in response. Her personal and private information has been disclosed and brought out into the open because the tenant did not believe the landlords regarding the 2 Month Notice. The information from her therapist regarding depression and anxiety is in the letter. The landlords work full-time, and she works full-time and goes to school. If the tenant missed applications for repairs, then that becomes the landlords' problem.

Analysis

Credibility

I found the submissions of the landlords' agent to be clear, concise, credible, and convincing. She provided her submissions in a calm, candid, straightforward, and consistent manner. Her submissions did not change throughout this hearing.

Conversely, I found that the testimony of the tenant was unclear, confusing, inconsistent, and less credible. The tenant changed her testimony throughout this hearing. She appeared to be upset and agitated throughout this hearing. She mainly focussed on discussing repairs to the heating system and a loss of quiet enjoyment, despite the fact that I repeatedly told her that I was not making a decision regarding same, only regarding the 2 Month Notice.

Application and Rules

The tenant, as the applicant, received an application package from the RTB, including instructions regarding the hearing process. The tenant served her application to the landlords and the landlords' agent confirmed receipt of same. The tenant received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing her application. This document 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):

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

- *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. I informed both parties of same during this hearing. Links to the RTB website and the *Rules* are also provided in the NODRP.

The tenant received a detailed application package from the RTB, including the NODRP document, with information about the hearing process, notice to provide evidence to support her application, and links to the RTB website. It is up to the tenant to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenant to provide sufficient evidence of her claims, since she chose to file this application on her 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 tenant did not properly present her application, claims, and 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*.

This hearing lasted 69 minutes, so the tenant had ample time and multiple opportunities to present her application and respond to the landlords' claims. I repeatedly asked the tenant if she had any other information to add and if she wanted to respond to the landlords' submissions.

The tenant failed to properly go through the voluminous documents that she submitted with her application. The tenant referenced some of her documents but did not review them in sufficient or specific detail during this hearing.

Findings

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within 15 days after she received the notice. The tenant received the 2 Month Notice on June 12, 2022. The tenant filed this application to dispute the notice on June 24, 2022. Therefore, the tenant is within the 15-day time limit under the *Act*. Accordingly, where the tenant applies to dispute the notice in time, the burden of proof is on the landlords to prove the reason on the notice. I informed both parties of the above information during this hearing.

Section 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 of the landlords intend in good faith to occupy the rental unit.

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 accept the landlords' documentary evidence and the affirmed submissions of the landlords' agent that she intends, in good faith, to occupy the rental unit for at least 6 months. The landlords' agent, who is their daughter, qualifies as a close family member under section 49 of the Act.

I find that the landlords have no ulterior motive to end this tenancy. I find that the landlords do not intend to re-rent the rental unit to obtain a higher rent. I find that the landlords will not obtain any financial profit, if the landlords' agent moves into the rental unit, as they do not intend to collect rent from her, and she does not intend to pay rent to them. The tenant did not dispute the above information during this hearing.

I accept that the affirmed submissions of the landlords' agent, that she currently lives with her parents, she wants to live independently, she works two jobs and goes to school, she is suffering from anxiety and depression, and her psychologist recommends that she live on her own and establish boundaries from her parents, the landlords, to improve her mental health. The landlords provided documentary evidence, including

the landlords' agent's school enrollment letter from September to December 2022, and a signed letter, dated October 29, 2022, from the psychologist of the landlords' agent. The tenant did not dispute the authenticity or contents of the above documents during this hearing.

I find that the tenant was unable to provide sufficient evidence to dispute the landlords' 2 Month Notice and to support her assertion that the landlords' agent does not intend, in good faith, to occupy the rental unit.

I find that the tenant failed to provide sufficient evidence of the following: that the landlords' intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, or evidence to show that the landlords have ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, to suggest that the landlords are not acting in good faith. This is as per Residential Tenancy Policy Guideline 2A above.

I find that the landlords' agent cannot be expected to incur debt and live at a different property, in order to ensure the tenant's continued tenancy at the rental unit. I find that the landlords' agent cannot live at another rental unit for free, as she does not intend to pay rent to the landlords if she moves into the rental unit. I find that the tenant failed to provide sufficient evidence that the landlords own other properties, where the landlords' agent can reside.

I find that it is not reasonable for the landlords' agent to live at another unit where she is required to pay rent. This is not a "comparable vacant rental unit" as per Residential Tenancy Policy Guideline 2A, above. Other units may be noisy and busy, particularly in multi-occupant residential buildings, as compared to the landlords' single family house dwelling. The landlords' agent identified noise as being an issue while living with the landlords.

I accept the affirmed submissions of the landlords' agent that she cannot occupy the other basement suite at the house, since it is for the use of her mother's parents, and they are out of town dealing with family issues, so it is currently vacant.

The tenant identified repair issues with the landlords. This tenancy began on April 1, 2021, and has lasted until at least November 10, 2022, the date of this hearing, over 1.5 years later. The tenant continues to occupy the rental unit, despite the above issues. The tenant failed to identify any previous RTB applications that she filed for repairs

against the landlords. She claimed that she was “too busy” to do so and that the heating issue was fixed in September 2022.

Based on a balance of probabilities and for the above reasons, I find that the landlords’ daughter (the landlords’ agent) intends to move into the rental unit in good faith to occupy it for at least 6 months. I find that she qualifies as a close family member under section 49 of the *Act*. I find that the landlords have met their onus of proof under section 49 of the *Act*.

I dismiss the tenant’s application to cancel the landlords’ 2 Month Notice, without leave to reapply. Pursuant to section 55 of the *Act*, I grant an order of possession to the landlords effective two (2) days after service on the tenant. I find that the landlords’ 2 Month Notice, dated June 10, 2022, complies with section 52 of the *Act*. The effective date on the 2 Month Notice of September 1, 2022, has long passed, since it is now November 10, 2022, on the date of this hearing.

Throughout this hearing, I repeatedly informed the tenant that I could issue a two (2) day order of possession against her if I upheld the landlords’ 2 Month Notice and ended her tenancy. The tenant repeatedly affirmed her understanding of same.

Since I have ended this tenancy, the tenant’s application for an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, and for an order restricting the landlords’ right to enter the rental unit, are both dismissed without leave to reapply. These claims relate to an ongoing tenancy only.

As the tenant was mainly unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I grant an Order of Possession to the landlords effective two (2) days after service on the tenant. The tenant must be served with this Order. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant’s application for a monetary order of \$5,800.00 and a past rent reduction of \$18,400.00 are both severed and dismissed with leave to reapply.

The remainder of the tenant’s application is dismissed without 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: November 10, 2022

Residential Tenancy Branch