



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Landlord and the two Tenants ("JC" and "AT") attended the participatory hearing. The Tenants testified, and the Landlord confirmed, that the Tenants served the Landlord with the notice of dispute resolution form and supporting evidence package by Canada Post Registered Mail on October 21, 2022 and November 23, 2022 respectively. The Canada Post tracking number confirming these mailings are reproduced on the cover of this decision.

The Landlord testified, and the Tenants confirmed, that the Landlord served the Tenants with the evidence excluding the Landlord's daughter's university transcript and Care Card. The Tenants raised no objections regarding the inclusion of this evidence.

I find that all parties have been served with the required documents in accordance with the *Act*.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* (the "*Rules*") does not permit recording of any RTB hearings by any party. At the outset of the hearing the Landlord and Tenants all separately affirmed they agreed to and understood how we would proceed, and they would not record the hearing.

Preliminary Issue: Service of the Two Month Notice

In their Application, the Tenants write:

Two Month Notice to End Tenancy was not delivered in person, as stated on the Notice. That was untrue. It was put through the mail slot and delivered via e-mail on September 27, 2022. [reproduced as written]

The Landlord in her written submission in part writes:

The Notice to End Tenancy was provided by J (the Landlord) to the Tenant, on September 27, 2022 (see attachment "A"). The notice was put through the mail slot. My husband and I tried to deliver another notice personally but the Tenants never came to open the door. [reproduced as written]

The Landlord testified that on September 27, 2022 she and her husband went to the rental unit with the Two Month Notice. When no one answered the door, she and her husband returned. The Landlord states that the Tenant spoke to her from the balcony and refused to come to the door to receive the Notice, so the Notice was put through the mail slot. She states she served the Notice as required. She also sent the Tenants a copy of the Notice via email, and the Tenants confirmed receipt of the Notice via text message.

The Tenant confirmed that he spoke with the Landlord from the balcony on September 27, 2022 when she was delivered the Notice, but he and his wife were sick with COVID and did not answer the door. They were in isolation. The Tenant confirms they received the Notice on September 27, 2022.

Residential Policy Guideline #12 in part 5, "Service of Documents Generally" reads in part:

The methods permitted for service of documents generally are:

.....

- by leaving a copy of the document in a mailbox or mail slot for the address where the person to be served resides at the time of service

Part 11 "Deemed Receipt" reads in part:

The Legislation sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered 'deemed' received:

.....

- if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after leaving it.

In this case, I note the Landlord intended to serve the Tenants personally and the Tenants refused to come to the door due to illness. The Landlord put the Notice through the mail slot where the Tenants reside. The Tenant acknowledged receiving the Notice on September 27, 2022. I find the Tenants were served with the Two Month Notice in accordance with the Act.

Issues to be Decided

Are the Tenants entitled to:

- 1) an order cancelling the Notice; and
- 2) recover the filing fee?

If the Tenants fail in their application, is the Landlord entitled to:

- 1) an order of possession?

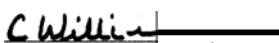
Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The Tenants submitted into evidence the tenancy agreement between the Landlord and Tenants for the upper unit (the "Upper Unit"). The parties entered into a written month to month tenancy agreement starting September 1, 2014. Monthly rent currently is \$1640.00 and is payable on the first of each month. The Tenants paid the Landlord a security deposit of \$750.00. The Landlord still retains this deposit.

The Applicants have been Tenants in the rental unit for approximately eight (8) years. The rental unit is in a residential property with two units, an upper rental unit and a lower rental unit. The Tenants occupy the upper unit, and several other Tenants have rented the lower unit between 2014 and 2022. When the downstairs Tenants left in 2020, AT and JC rented both the upper and lower levels from July 1, 2020 through June 30, 2021 ~~July 31, 2021~~.

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
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AT used the lower-level unit for his business. The most recent Tenants to rent the lower-level unit vacated the lower-level rental unit in May 2022. The lower-level unit is currently vacant. The basement rental unit is a confirmed illegal suite.

On September 27, 2022, the Landlord served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on grounds "the Landlord or a close family member wishes to occupy the rental unit" stating the Landlord's daughter will move into the rental unit. The effective date of the Notice was November 30, 2022. The Notice was issued some 34 days after the municipality inspected the rental unit based on the several complaints the Tenants made to the municipality.

On October 7, 2022, the Tenants applied to the RTB to cancel the Notice arguing the Notice was not given with the good faith intention of occupying the rental unit but rather was motivated by the fact the Tenants have filed multiple complaints with the municipality for alleged bylaw violations.

The Tenants testified that the Notice was retaliatory. In their written statement the Tenants in part provide:

We believe that the Landlord, JJ is not acting in good faith and the Two Month Notice to End Tenancy for landlords Use of Property is in retaliation for filing three complaints with the bylaw office regarding an illegal suite, property maintenance and management and being bullied by the lower unit Tenants and Landlord. [reproduced as written]

The Tenants stated they filed the complaints after confirming the suite was illegal. The Tenants filed three (3) separate complaints about the illegal suite with the municipal bylaw office on the following dates: May 25, 2022; June 3, 2022; and June 15, 2022. The Tenants listed a number of concerns in their letter to the municipality including loss of quiet enjoyment of their home; smoke coming into the upper unit from unventilated/unvented cooking stove in the lower unit; fire/safety concerns; shared electrical outlets between the upper and lower units; stolen personal items; lack of COVID protocols in shared spaces; yard maintenance issues and “so many complaints that are clearly not up to code or bylaw standards”.

The Tenants also allege the Landlord issued the Notice to avoid their obligations under the Act by failing to comply with municipal bylaws thereby not meeting their responsibility to maintain the residential property.

The Tenants stated they have had an acrimonious relationship with the Landlord throughout the tenancy. After multiple requests made to the Landlord to comply with municipal bylaws and health and safety standards, the Tenants filed complaints and asked the municipality to inspect the residential property. The Tenants in their May 25, 2022 letter to the municipality write;

We have sent numerous requests over the years to rectify the ongoing problems and have had endless arguments and confrontations, both in person and in writing, with the landlords/owners. We have emails, text messages, audio and video of our interactions, complaints, and bylaw violations. I has now escalated into filing an official complaint with you, the bylaw office of [XXX], as well as open a dispute resolution with the residential tenancy board.

Furthermore, we are in danger of being evicted for raising attention to the illegal suite – and we are asking that we first determine if the unit is or is not authorized, safe, inspected and approved for this home. Is there someone in this office who can assist us? We would like to move forward with caution, considering an eviction at this time will absolutely lead us to homelessness.

The Tenants allege that when the Landlord was made aware of the inspection, the Landlord arrived at the rental unit and quickly tried to install smoke detectors and “groom” the Tenants prior to the inspection on what to say or not say. When the Tenants refused, the Landlord allegedly threatened to evict them and have their daughter move into the rental unit.


On August 24, 2022 a bylaw officer, fire code building inspector, and chief inspector arrived at the rental unit to complete a walk-through inspection of the downstairs unit. The group came to the door of the upper unit but left without inspecting the upper unit. The officer and inspectors assessed the basement rental unit to see if it could be brought into compliance. After the basement unit was inspected, the bylaw officer returned upstairs and did a walk-through inspection of the upper unit with the Landlord.

In their written statement the Tenants submitted a quote attributed to the Landlord that indicates the Landlord will continue the process of legalizing the suite once her daughter moves into the upper rental unit. The Tenants allege this is the ulterior motive for issuing the Notice. In their written statement the Tenants state:

...we believe that she now has an ulterior motive. It is our understanding that the Landlord has the intention to move a family member in (her daughter) for the short term, in order to legalize the illegal basement suite.

The Tenants state that the lower-level suite remains an illegal suite. They believe that to bring the basement suite up to 2018 code and legalize it would be expensive. They testified that the Landlord has a pattern of renting to students in the short term.

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The Tenants argued that the Landlord's daughter could live in the ~~vacant~~ basement suite stating, 'it is a 'good starter home'. The Tenants further argue that the Landlord owns several properties in the municipality and could evict any number of other Tenants to accommodate her daughter's housing requirements.

In conclusion the Tenant states that his wife is still recovering from a 2021 hysterectomy and is only able to work from home. To move would cause undue hardship. To be evicted leaves them homeless.

The Landlord states that she has been a Landlord for over 30 years and is well aware of the ramifications if the intent of the Notice is not met. The Landlord stated, 'Why would I risk that?' The Landlord stated she has always complied with the law.

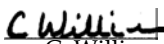
The Landlord denies that the Two Month Notice was issued in retaliation. The Landlord states that her daughter currently attends university in a different municipality. She has just completed her 4th year of academic courses and is required to complete a practicum to graduate. In the summer, the Landlord's daughter started talking to her parents about moving back to the lower mainland. The daughter applied for and was accepted into a practicum placement in the lower mainland. The practicum starts January 3, 2023 through April 30, 2022. The Landlord submitted into evidence the acceptance letter with a confirmed start date of January 3, 2023. When I asked about the Landlord's daughter's long-term plans, the Landlord stated her daughter plans remain in the rental unit for at least 4-5 years.

With respect to the inspection of the illegal suite, the Landlord stated that the municipality rescheduled the August 6 inspection for August 24, 2022. She denies "threatening" the Tenants with eviction if they pointed out defects to the Bylaw Officer and Inspectors. She states on August 6, 2022 she did an inspection of the residence and discussed with the Tenants her daughter's intention to move back to the lower mainland upon completion of her courses in December.

On August 6th when we were doing an inspection of the house, my husband and I and A and J were having a discussion in the kitchen and we talked about my daughter moving into the house in December as she was moving from [X] to [Y] when she finished her classes at [university].

The Landlord states that the Tenants were aware that her daughter was moving back as she had mentioned it to them several times during the summer prior to issuing the Notice.

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The Landlord, the Landlord's husband and their daughter lived in the rental unit prior to the Tenants possession date. The Landlord stated that the rental unit is suitable for her daughter because it was their family home prior to the Tenants' renting, its proximity to the practicum, it is safe, and the ideal size for a single person.

The Landlord testified the ~~vacant~~ basement suite is not a suitable accommodation for her daughter as a single woman, citing safety concerns.

The Landlord's daughter planned to move into the rental unit on December 1, 2022, before final exams. Since the Tenants have not moved out of the rental unit, her daughter has had to incur additional expenses, including an extra month's rent, and will have to transition in several moves after exams and over Christmas.

The Landlord confirmed that she, with business partners, do own other rental properties in the municipality. The Landlord solely owns this property, and it is the most suitable for her daughter.

The Landlord denies the Tenants' allegations of discrimination and bullying. She stated that she as always treated her Tenants fairly. The Landlord denies that the Notice was retaliatory.

The Landlord states that she does not intend to legalize the suite and believes that municipal bylaws will likely be relaxed because of the rental shortage. The Landlord testified that the municipality had no concerns regarding the lower- level rental unit but she did not submit the bylaw compliance letter to the RTB as supporting evidence.

The Landlord also stated that the Tenants had discordant relationships with the short-term Tenants in the lower unit that resulted in those Tenants moving out of the rental unit. The Landlord states that it was the upper unit Tenants that were bullying the lower unit Tenants, not the other way around. She submitted into evidence emails from these Tenants. The Landlord stated the upper unit Tenants wanted to vet future prospective downstairs renters for compatibility before the Landlord entered into a tenancy agreement with potential future Tenants. The Landlord refused the request stating that she has always exercised due diligence when selecting Tenants.

The Landlord concluded by stating she is familiar with the penalty of ending a tenancy for Landlord's use and failing to do so.

Analysis

The Act s. 49(3) provides that a Landlord may end a tenancy by giving a Two Month Notice "if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit".

The Act s.55 provides that I must grant to the Landlord an order of possession if the Two Month Notice complies with the Act s. 52 form and content requirements, and I dismiss the Tenant's Application or uphold the Landlord's notice.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, provides a statement of the policy intent of the legislation. The key points, as set out in the guideline, are:

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.

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 [Act] or the tenancy agreement.

.....

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 ulterior motive.

Both parties were aware that the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the Landlord has met the burden to show she issued the Two Month Notice for a valid and sufficient reason. This finding has two parts that form the basis for my conclusion.

First, I find as fact, to support my conclusion, that the Landlord had a good faith intention to use the rental unit for the purpose stated in the Two-Month Notice.

I find as fact that the circumstances changed within the Landlord's family when her daughter decided to move back to the lower mainland after completion of her final semester at university. As evidence of her intention to move back to the lower mainland, the Landlord's daughter secured a practicum in the area. The Landlord submitted the acceptance letter confirming the Practicum from January 3 through April 30, 2023 along with confirmation that their daughter completes the last semester of her four-year university degree in December 2022.

The Tenants further questioned the good faith intention of the Landlord by arguing that the Landlord owns multiple properties in the municipality that her daughter could occupy therefore issuing the Notice to them was retaliatory. I find that while the Tenant's speculate the Landlord had other 'suitable properties', the Tenants failed to provide sufficient evidence of these alleged suitable properties, such as, for example, addresses.

In the absence of evidence to the contrary, I accept as fact the Landlord affirmed testimony that she co-owned other properties with a group of investors making those properties unsuitable. The rental unit, occupied by the Tenants, was the family home, is owned solely by the Landlord, and is suitable for her

daughter given the proximity to the practicum and her daughter's familiarity with the house and neighborhood.

The Tenants also argued that the Landlord's daughter could reasonably occupy the lower-level unit stating it is a 'good starter home'. I find it curious that the Tenants filed multiple complaints with the municipality about the illegal suite citing health and safety concerns, multiple bylaw violations, and note the expense associated with bringing the lower-level unit up to 2018 code but argue that it is suitable for the Landlord's daughter.

Although the Landlord testified the inspectors identified no concerns upon inspection, the lower unit remains illegal and in noncompliance with the bylaws and building code requirements. I, therefore, find if, as the Tenants initially allege, the lower-level unit is a safety risk for non-familial Tenants to occupy then it is equally unsafe for the Landlord's daughter to occupy. Further, the Landlord states the upper-level unit is the safer unit for a single woman living alone.

The Tenants write, "It is our understanding that the Landlord has the intention to move a family member in (her daughter) for the short term...". Although the Tenants reference their "understanding" of the Landlord's "intention" they provided insufficient evidence confirming how they came to this "understanding". I therefore prefer the Landlord's affirmed testimony that her daughter intends to live in the upper-level rental unit in the long term.

Further, although this does not carry my finding on this point exclusively, I find it a relevant acknowledgement by the Landlord that she is aware of the seriousness of ending a tenancy on a false pretext. The Landlord is aware of the consequences imposed by the *Act* where a Landlord does not accomplish the stated purpose within a reasonable time or use the unit for that purpose for at least six months and stated so explicitly in the hearing. That is s. 51(2) of the *Act*, where the Landlord must pay compensation equal to 12 times the amount of rent, where they do not accomplish that stated intent.

Second, to support my findings that there is insufficient evidence of an ulterior motive on the part of the Landlord, I find the following as fact.

The Tenants allege the Landlord had an ulterior motive to issue the Two Month Notice arguing the Notice was issued as the direct result of the complaints they filed with the municipality about the illegal suite.

I accept as fact that the Tenants filed three (3) complaints with the municipality between the end of May and the middle of June 2022. I have considered if this proves, on a balance of probabilities, the impetus for the Notice.

I note in the Tenants' complaint to the municipality they wrote:

We have sent numerous requests over the years to rectify the ongoing problems and have had endless arguments and confrontations, both in person and in writing, with the landlords/owners. We have emails, text messages, audio and video of our interactions, complaints, and bylaw violations.

I accept as fact the Tenant/Landlord relationship has been wrought with conflict over many years. None of the “endless arguments and confrontations” over the years resulted in the Landlord responding by retaliating or otherwise mentioning other reasons to end the tenancy.

Prior to issuing the Two-Month Notice, I find the Landlord has not contributed to or initiated communication that can be interpreted as moves toward ending the tenancy for any reason other than their need for the rental unit. My finding here is based on a review of all records before me in this hearing and each party’s testimony.

Although the Tenants questioned the good faith intention of the Landlord and alleged ulterior motives this is unsupported by the evidence.

Based on these two considerations – where the Landlord had a good faith intention, and no dishonest motive – I find the Landlord has shown they issued the Two-Month Notice for a valid and sufficient reason. As per the *Act* s. 49(3), I find they or their close family member intends in good faith to occupy the rental unit.

The *Act* s.55 provides that I must grant to the Landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the Tenants’ Application or uphold the Two-Month Notice.

For the reasons above, I uphold the Two-Month Notice issued on September 27, 2022. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the Landlord is entitled to an order of possession on the effective date. I also find that the Tenants are overholding the rental unit and that the Landlord is therefore entitled to an Order of Possession pursuant to s. 55(2) of the *Act*. The tenancy shall end with the service of the Order of Possession.

The Tenants are entitled to compensation in the amount of one month’s rent pursuant to s. 51 of the *Act*.

Conclusion

Pursuant to section 55(2) of the *Act*, I order that the Tenants deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached order(s) by the Landlord.

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: December 28, 2022

Residential Tenancy Branch