Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes CNL, FFT

Introduction

Both hearings dealt with the tenants' application, filed on June 13, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated May 31, 2022 ("2 Month Notice"), pursuant to section 49;
- authorization to recover the $100.00 filing fee for this application, pursuant to section 72.

The "first hearing" occurred on October 27, 2022, and lasted approximately 62 minutes from 11:00 a.m. to 12:02 p.m. The "second hearing" occurred on December 1, 2022, and lasted approximately 55 minutes from 9:30 a.m. to 10:25 a.m. Both hearings lasted approximately 117 minutes total.

The landlord, the landlord's lawyer, the two tenants, tenant MZB ("tenant") and "tenant AR," and the tenants' lawyer attended both hearings. At both hearings, all hearing participants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, all hearing participants confirmed their names and spelling. At both hearings, the landlord's lawyer and tenant AR provided their email addresses for me to send copies of both decisions to both parties after both hearings.

At both hearings, the landlord said that she owns the rental unit and provided the rental unit address. At both hearings, she confirmed that her lawyer had permission to represent her and identified her lawyer as the primary speaker.

At both hearings, both tenants confirmed that their lawyer had permission to represent them and identified their lawyer as the primary speaker.

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 both hearings, all hearing participants separately affirmed that they would not record both hearings.

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At the first hearing, I informed them that I could not provide legal advice to them or act as their agent or advocate. At both hearings, they had an opportunity to ask questions, which I answered. At both hearings, neither party made any adjournment or accommodation requests.

At both hearings, both parties affirmed that they were ready to proceed with both hearings, they wanted me to make a decision, and they did not want to settle this application. At both hearings, both parties were given multiple opportunities to settle at the beginning and end of both hearings and declined to do so.

At both hearings, 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 and any occupants at the rental unit. At both hearings, both tenants affirmed that they were prepared for the above consequence if that was my decision.

At both hearings, I cautioned the landlord that if I cancelled her 2 Month Notice, I would not issue an order of possession against the tenants or any occupants, and this tenancy would continue. At both hearings, the landlord affirmed that she was prepared for the above consequence if that was my decision.

At the first hearing, the landlord's lawyer confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' lawyer confirmed receipt of the landlord's evidence. In my interim decision, I found that, in accordance with sections 88 and 89 of the *Act*, the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's evidence.

At the first hearing, the landlord's lawyer objected to me considering the tenants' late evidence package, which she said was received on October 25, 2022, two days before the first hearing on October 27, 2022. She said that the evidence was late, contrary to

Rule 3.14 of the RTB *Rules*, since it was received less than 14 days prior to the first hearing. She claimed that the evidence was prejudicial, and the landlord did not have a chance to respond. The tenants' lawyer stated that the tenants were not relying on this late evidence for their application.

At the first hearing and in my interim decision, I informed both parties that I would not consider the tenants' late evidence in my decision, as the tenants were not relying on it and it was received late, less than 14 days prior to the first hearing, contrary to Rule 3.14 of the RTB *Rules*. At the first hearing and in my interim decision, I notified both parties that the landlord did not have a chance to respond, and the tenants had ample time to provide their evidence in a timely manner, since they filed this application on June 13, 2022, approximately 4.5 months prior to the first hearing on October 27, 2022.

At the first hearing, the landlord stated that she served the 2 Month Notice to the tenants on May 31, 2022, by way of posting to their rental unit door and by email. At the first hearing, the tenant confirmed receipt on June 2, 2022, by way of email, claiming that the tenants were out of country, so they did not receive the notice on the door until September 2022. In my interim decision, I found that, in accordance with section 88 of the *Act* and section 43 of the *Residential Tenancy Regulation,* the tenants were duly served with the landlord's 2 Month Notice on June 2, 2022, by email.

Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on October 27, 2022 was adjourned for a continuation after 62 minutes because it did not finish within the 60 minute hearing time and both parties had further submissions to make. By way of my interim decision, dated October 27, 2022, I adjourned the tenants' application to the second hearing date of December 1, 2022. During the second hearing, both parties affirmed that the above information was correct.

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notice of reconvened hearing with the second hearing date information, from the RTB. At the second hearing, both parties confirmed receipt of my interim decision and notice of reconvened hearing.

At the second hearing, I reviewed the following information, contained on pages 3 and 4 of my interim decision, with both parties:

I informed both parties that the reconvened hearing is only to hear the remaining submissions from the landlord's lawyer (which she estimated at 15 minutes), the response submissions from the tenants' lawyer (which she estimated at 15 minutes), and any response submissions from the landlord's lawyer (which she estimated at 5 minutes). I informed both parties that they would have full opportunities to present their testimony, submissions, and evidence, and they were not required to rush through their presentations, to avoid any adjournments. Both parties affirmed their understanding of same.

…

I informed both parties of the following information during this hearing. Both parties are directed not to serve any further evidence, prior to the reconvened hearing. No witnesses are permitted to testify at the reconvened hearing. Neither party is permitted to file any new applications after this hearing date of October 27, 2022, to be joined and heard together with the tenants' application, at the reconvened hearing. Both parties affirmed their understanding of same.

At the second hearing, both parties affirmed that the above information was correct.

At the second hearing, I informed both parties that they would both have a full opportunity to present their submissions and respond to the other party's submissions. I notified them that they were not required to rush their submissions, to avoid any further adjournments. I informed them that if a further adjournment was required to allow additional time for submissions, it would be granted. At the second hearing, both parties confirmed their understanding of the above information.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for landlord's use of property?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

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

Both parties agreed to the following facts at the first hearing. This tenancy began on April 1, 2012. Monthly rent in the current amount of $1,600.00 is payable on the first day of each month. A security deposit of $750.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. Since 2018, the tenants have been living and working in Germany, and the tenant's mother has been occupying the rental unit.

Both parties agreed to the following facts at the first hearing. A copy of the landlord's 2 Month Notice was provided. Both parties agreed that the effective move-out date on the notice is July 31, 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.*

At the first hearing, the landlord testified regarding the following facts. Her son currently lives in unit #1 at the same building as the tenants' rental unit. In late May 2022, things became worse in her son's apartment. It was his 30th birthday in August 2022. Her son needs a larger apartment, and it would work for him and his well-being. She got the 2 Month Notice done on the RTB form and emailed it to the tenants, stating that it was "sad news." There were no issues with the tenants. It is the best place for her son to move. Her son's business is getting bigger, as he buys and sells used clothing, and he is a fashion stylist, so he ships out clothing. Nine months ago, he obtained a shared storefront, he received more stock, and his place became fuller, where he currently lives. She chose the tenants' rental unit specifically because it is right below her own suite in the building, above the foyer, and she can share internet with him. He will be located at the front of the building for security at the front door. All four of her kids have lived in the building at different times and have had issues being located above and below other occupants. Her son is the noisiest and does not want to disturb others. The tenants' rental unit has a balcony and the landlord's son and his friends vape, which is allowed, but his current unit does not have a balcony. The tenants say that there are other comparable units in the same building, but they do not have balconies. Unit #103 underwent a $30,000.00 renovation, the landlord wants to recoup her investment, there is no balcony, it is located at the back of the building, and it is located above and below other occupants. The landlord's decision to renovate unit 103 was made in January 2022, as that unit had long term occupant and they provided notice to

move out, before the landlord decided to renovate. At that time, the landlord had not decided for her son to move to another unit. The renovations finished and it is not comparable to the rental unit because it has new appliances and new flooring, and it is more modern.

At the first hearing, the landlord stated the following facts. The tenants' rental unit has a few upgrades, but it is an older unit in an older building. Unit #103 is furnished, so the landlord can get more rent money. Unit #102 was left furnished, and her daughter and son-in-law live there, since spring 2017, as they keep the apartment as a "pied-a-terre." Her daughter makes more by paying the landlord rent and obtaining cash rent from subletters. The advertisements in the tenants' evidence for unit #102, were posted by her son-in-law, not the landlord. Unit #201 is a junior one-bedroom suite, which is next to the landlord's unit. It is not big enough for the landlord's son and there is no office space. Unit #3 is a three-bedroom unit, which is too large for her son and will require him to have roommates, which he does not want. The landlord is receiving over $3,000.00 in rent for this unit. Unit #204 is rented to the landlord's sister since 2011, and it is located above other occupants. Unit #203 has had occupants there since 2015, there is no balcony, they are long term tenants, and it is located above other occupants. The tenants' rental unit is not surrounded by other occupants. The landlord has no other reasons for ending this tenancy. She has no issue with the tenants subletting their rental unit, as they pay their rent on time. She can provide a good reference for the tenants, to prospective landlords because they are good tenants. If her son moves into the rental unit, he is only going to be paying $500.92 to the landlord, the same amount that he currently pays in his own unit. The only other time the landlord issued a notice to end tenancy was when her son moved into his current unit, where he continues to reside. The previous occupants moved out, they got an extra rent month free, and they were given over two months' notice to move. She has been a landlord for more than 10 years. Her son's unit is 395 square feet. The tenants' rental unit is 600 to 675 square feet.

At the first hearing, the landlord's lawyer made the following submissions. The landlord issued the 2 Month Notice, pursuant to section 49(3) of the *Act*. The tenants dispute this notice. The landlord issued the notice for a close family member, her son, to move into the rental unit. He has been living in a smaller unit in the same building and recently turned 30, so his personal and professional needs have evolved. He intends to occupy the rental unit on a permanent basis in good faith. It would improve his quality of life and the tenants have provided no evidence to undermine this fact. There is no evidence of the landlord's financial gain, as alleged by the tenants. The landlord will be collecting significantly less rent income from her son. The landlord will receive

$1,100.00 less per month, from her son, than what she currently receives from the tenants, of $1,600.00 per month. The tenants allege that this is retaliatory for them subletting the rental unit, but they have provided no evidence of same. The emails provided by the tenants are from years prior to the 2 Month Notice being issued. The relationship between the landlord and tenants has been amicable and friendly. The landlord provided a sketch of the building layout, as evidence. The tenants have not lived in the rental unit since October 2018, as they moved overseas. They sublet it to the tenant's mother and other occupants. It was too risky for the tenant's mother to live with other tenants. The landlord helped the tenants sublet the rental unit, as per the text messages and evidence provided by the landlord. The landlord has accommodated the tenant's mother's needs, when the tenants could not travel back to town, to do so.

At the second hearing, the landlord's lawyer made the following submissions. The landlord's son provided an affidavit as evidence for this hearing. In the affidavit, he indicated that he has been living in his current unit since 2016, it is no longer feasible, and he started his own business in 2017. He stated that his supplies and materials are all over his unit, he provided photographs of same, it is not safe, and he cannot have company over. He claimed that there are other larger units in the building, and for his 30th birthday, he was offered the tenants' rental unit to reside there. He explained that it would improve his quality of life and well-being. He said that he will have access to his parents' unit, located above the rental unit, even when they are out of town. He stated that he will be near the yard to help and maintain the building. He indicated that he keeps late hours for work, so he does not want to live in a unit above or below other occupants. He stated that he currently pays $500.00 per month, which he will continue to pay for the first year of living in the tenants' rental unit. He claimed that he intends to live in the rental unit for the next few years. He stated that he agreed to move into the rental unit in May 2022, and it was formalized in writing with a tenancy agreement, that was provided as evidence. He maintained that he wants to move into the rental unit as soon as possible.

At the second hearing, the landlord's lawyer made the following submissions. There are 11 units total in the building, and all units are occupied by other tenants, who have no intent to move out, as per the landlord's evidence. The landlord testified and her son provided an affidavit, that there were no other units available or comparable, at the time that the 2 Month Notice was issued to the tenants. Unit #103 is not comparable, the occupants were living there for six years, notice was given to move out, and renovations and upgrades were done. It was the landlord's business decision to complete the renovations. The floors, fixtures, and furnishings in that unit bring significantly higher rent to the landlord. The landlord's son will be paying a reduced rent of $500.00, which

is not comparable, for the renovations in that unit. Unit #102 is rented to the landlord's daughter and son-in-law since 2017. They pay $1,850.00 per month in rent to the landlord. They have permission to sublet the unit and they provided their sublease agreements and e-transfer documents as evidence. They sublet the unit on their own and post advertisements on their own. Unit #201 has been rented to other occupants since 2021, it is too small, it is furnished, and it was recently renovated, so it is not comparable or available. Unit #3 has a higher rent, which is not comparable, as it is a three-bedroom apartment of 1,050 square feet, which is too large. The landlord has no bad faith or ulterior motives against the tenants. All the other units in the building are currently being rented to other occupants. The landlord has not issued any other previous notices to end tenancy and no previous occupants were evicted in bad faith. The last notice to end tenancy, which was provided as evidence, was issued in November 2015, for the landlord's son to occupy the unit, where he is currently residing. Her son's current unit is a studio apartment. That is the only other notice to end tenancy given by the landlord.

At the second hearing, the landlord's lawyer made the following submissions. The tenants' emails do not demonstrate bad faith or a dishonest motive by the landlord. The emails are from one year prior or more. The criteria in the Residential Tenancy Policy Guideline have been met, as per the landlord's evidence. The landlord's son intends, in good faith, to occupy the rental unit. The landlord provided testimony and an affidavit from her son, regarding same. It is not disputed by the tenants, that the landlord's son wants to move into the rental unit. The tenants are arguing that there are other units available in the same building. The landlord has no ulterior motives and the tenants have not provided any evidence to support same. The landlord will be receiving less rent, not more, if her son moves into the rental unit. The landlord's son's rent of $500.00 per month, is $1,100.00 less than what the tenants currently pay of $1,600.00. The landlord is not obtaining any financial gain, as this is speculation by the tenants. In a previous RTB decision, the Arbitrator dismissed the tenants' application, as the tenants failed to identify comparable rental units, since they were not a comparable size. The tenants have been absent from their rental unit and are subletting it. The email exchange from March 30, 2020, is 2 years prior to the 2 Month Notice being issued to the tenants. The landlord was not upset, as she retracted and apologized to the tenants after. There is no pattern of behavior, where the landlord has evicted other tenants for ulterior motives. The last notice to end tenancy was for the landlord's son to move into the unit, where he currently resides. The landlord issued the notice in good faith, has no ulterior motives, requests an order of possession against the tenants, and for their application to be dismissed.

At the second hearing, the tenants' lawyer made the following submissions. The good faith honest intention was referenced by the Supreme Court of British Columbia. The tenants' rent is the lowest, as compared to other occupants in the same building. The landlord posted advertisements in 2022 to rent units in the same building for $2,500.00 and $2,850.00. Another unit is for $3,050.00. The landlord says that she will lose money if her son moves into the rental unit, but the tenants think that the landlord will re-rent the rental unit for $1,600.00 or more, to new occupants. The first reason is that the landlord has a financial motivation, as noted in the following. The landlord said that she made a business decision to renovate unit #103 and her son cannot move in because of money. The landlord says that unit #3 has a current higher rental rate. The landlord said that the tenants' rent was far below other units in the building in her email. She asked the tenants what they thought was fair to pay for a rent increase. The tenants were paying $1,550.00 in rent at the time and agreed to pay $1,600.00 per month in rent, as of May 2021. The tenants waived the required 3 months' notice from the landlord, for the rent increase.

At the second hearing, the tenants' lawyer made the following submissions. The second reason is that the landlord is unhappy with the current arrangement. The previous communication from the landlord, compares the rent for other units. The tenants have lived abroad, temporarily since 2018. The tenants had two approved renters, one for each bedroom. The tenant's mother uses one bedroom and the other one is used by the tenants when they are in town. The landlord said that she was increasingly uncomfortable in the building, and she wanted to end the untenable situation, as per her emails from March 30, 2020. The landlord later apologized in her emails and said that if the tenants do not return from out of town, then she will rethink the situation. On June 6, the tenants asked for a solution with the landlord. The landlord knows that the tenants live overseas, and the tenant's mother lives in the rental unit. There are 11 units in the building and 7 are of comparable size. Of the 7, 3 advertisements were posted for vacancy, around the time that the 2 Month Notice was issued to the tenants. This may suggest that the landlord is not acting in good faith. The landlord stated that she has to host extra family members but if the landlord wants to reclaim a bigger living space, then this is a separate application, which has not been made by the landlord. The landlord's son provided an affidavit, which does not include a request to host these extra family members. Vaping is not allowed at the rental property, as per the tenants' tenancy agreement, so the tenant's son is not allowed to smoke on the balcony or anywhere in the building, anyway. The building is full of young professionals, but the landlord's son claims that he is noisy. The landlord's son will be located above other occupants, if he moves into the tenants' rental unit, unless the landlord keeps her son's current unit #1, which is located below the rental unit, empty

indefinitely. Why does the front of the building need supervision and not the back of the building.

At the second hearing, the tenants' lawyer made the following submissions. Unit #102 is no different then the tenants' rental unit, except that the landlord's daughter and son-in-law occupy it. The landlord claims that she has no control over those occupants. However, advertisements were posted by the landlord's son-in-law for unit #3 and unit #201 as well, so the tenants do not know who lives there. The landlord claims to have made renovations of $37,500.00 in May and June 2022, to unit #103. The landlord says this unit is not comparable, but on June 16, 2022, it was advertised for re-rental, 16 days after the 2 Month Notice was issued to the tenants. The landlord says that unit #3 is too large, but it is only 1,050 square feet. Unit #201 is 560 square feet, as per the landlord's evidence, stating that it is furnished and located below other occupants. The landlord's advertisement says that unit #201 is actually 600 square feet, which is a 40-square-foot difference. The advertisement says that the unit can be rented unfurnished, and it is on the top floor, not located below other occupants. It also has a balcony and faces the front of the building, so it is comparable. There are 4 additional units in the building that the landlord has not provided any evidence about. There is no urgency for the landlord's son to move in. The tenants disagree that the landlord is offering the rental unit to her son because he has a 5-year-old business, and it was his 30th birthday. The tenants agreed to a rent increase, waived the required 3 months' notice, and have been acting in good faith. The tenants want to relocate to the rental unit permanently, when they are able to do so.

At the second hearing, the landlord's lawyer stated the following in response. On March 30, 2020, the landlord sent an email with an apology and a retraction shortly after. The landlord explained her concerns in her testimony and her email was at the beginning of the covid-19 pandemic because she was concerned about the virus. It was over two years prior to the 2 Month Notice. The tenants' allegation that there is no urgency for the landlord's son to move into the rental unit, is their own subjective opinion. The landlord's son needs the rental unit as soon as possible. The tenants' rental unit is above the lobby, not other occupants. It is not above the landlord's son's current unit #1.

At the second hearing, the landlord stated that there were no other units in the building available at the time that the 2 Month Notice was issued to the tenants, and this is speculation by the tenants.

Analysis

Credibility

At both hearings, I found the affirmed testimony of the landlord and the submissions of the landlord's lawyer to be clear, concise, credible, and convincing. They both provided their submissions in a calm, candid, straightforward, and consistent manner. Their submissions did not change throughout both hearings. The landlord provided relevant documentary evidence to support her testimony and the landlord's lawyer referenced same at both hearings.

Conversely, I found that the tenants' evidence was based on speculation and conjecture, rather than facts. I find that the tenants' position focussed mainly on other units where the landlord's son could live, rather than the reason on the 2 Month Notice. The landlord's lawyer raised this issue at the second hearing.

Application and Rules

The tenants, as the applicants, received an application package from the RTB, including instructions regarding the hearing process. The tenants received documents entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing their original application and when the first hearing was adjourned to the second hearing. These documents contain the phone numbers and access codes to call into both hearings.

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 the second hearing. Links to the RTB website and the *Rules* are also provided in the NODRP.

The tenants received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. It is up to the tenants to be aware of the *Act, Regulation,* RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenants to provide sufficient evidence of their claims, since they chose to file this application 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 tenants did not sufficiently present their application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during two hearings, as per Rules 7.17 and 7.18 of the RTB *Rules*.

Both hearings lasted 117 minutes total. The tenants had ample time and multiple opportunities to present their application and respond to the landlord's claims. I repeatedly asked the tenants and their lawyer if they had any other information to present and provided them with multiple opportunities to respond to the landlord's

submissions at both hearings. The tenants failed to sufficiently review the details of the voluminous documents and evidence submitted with their application.

Findings

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 they receive the notice. The tenants claimed that they received the 2 Month Notice on June 2, 2022, and filed this application to dispute it on June 13, 2022. Therefore, the tenants are within the fifteen-day time limit under the *Act*. Accordingly, where tenants apply to dispute the notice in time, the burden of proof, on a balance of probabilities, is on the landlord to prove the reason on the notice.

Section 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. It is undisputed that the landlord's son qualifies as a close family member and child, under section 49 of the *Act*.

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 landlord's son, intends, in good faith, to occupy the rental unit. I find that the landlord has no ulterior motive to end this tenancy. I find that the landlord does not intend to re-rent the rental unit to obtain a higher rent. I accept the landlord's documentary evidence, the affirmed testimony of the landlord, and the submissions of the landlord's lawyer at both hearings. Neither the tenants, nor their lawyer, disputed the authenticity of the landlord's documents submitted as evidence.

I accept that the landlord's son currently occupies a different, smaller studio unit of approximately 395 square feet, in the same building where the tenants reside, but his current space is too small for him. I accept that the landlord wants to provide her son with a larger space to live and work, since the rental unit is a one bedroom and den unit of approximately 660 square feet, as per the landlord's rent roll document. I accept that the landlord wants to provide her son with a unit that is not surrounded by other occupants above or below, in order to minimize noise and late work hours. I accept that the landlord wants her son to be close in proximity, to help manage and ensure the security of the building, the yard, and the landlord's unit. The tenants' rental unit is below the landlord's current unit, and above the lobby at the front of the building, near the front entrance door. I accept that the landlord wants to provide a better quality of life for her son, who recently turned 30 years old and his personal and professional needs have evolved. I accept that all 4 of the landlord's children have lived in this building, including her daughter, who currently rents one of the units. The landlord provided an affidavit from her son, a floor sketch of the building, and photographs of her son's current unit which is cluttered with clothing and work items. The landlord also provided a signed, written tenancy agreement between the landlord and her son, for him to occupy the rental unit as soon as possible with a rent of $500.92 per month.

I find that the tenants were unable to provide sufficient evidence to dispute the landlord's 2 Month Notice or to show that the landlord's son does not intend, in good faith, to occupy the rental unit. I find that the tenants' submissions were more focussed

on finding other comparable units in the same building, where the landlord's son can reside, rather than contesting that the landlord's son intends to occupy the rental unit. I find that the tenants' arguments are based on conjecture and speculation.

I find that the tenants failed to provide sufficient evidence of the following: that the landlord's intention is to re-rent the unit for higher rent without her son living there for a duration of at least 6 months, or evidence to show that the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, or that there are comparable vacant rental units in the property that the landlord's son could occupy, to suggest that the landlord is not acting in good faith. This is noted in Residential Tenancy Policy Guideline 2A above.

I find that the tenants failed to provide sufficient evidence that there are other comparable vacant rental units in the same building, that the landlord's son can occupy. I find that the other units identified by the tenants, are not available or comparable. I find that these other units are currently occupied and rented by other tenants. I find that the other units are either too small or too big in size, are located in less desirable areas of the building away from the front entrance and the landlord's unit, and are located above or below other occupants. These are not a "comparable vacant rental unit" as per Residential Tenancy Policy Guideline 2A, above.

I find that the tenants' rental unit is an older unit with few upgrades, is unfurnished, and unrenovated. I find that this unit, along with its proximity to the front of the building and the landlord's unit, and away from other occupants, is reasonable for the landlord's son. I find that the landlord is entitled to rent other larger, renovated, furnished units in the building to other occupants who pay a higher rent at current market rates. I find that the landlord is entitled to obtain financial profit from other units in the building, as the landlord is engaged in a business of renting properties to tenants for financial profit. I find that the landlord's son is only entitled to pay a reduced rent of $500.92 to the landlord because she is his mother, as the rent for the tenants' unit is significantly higher at $1,600.00.

The tenants identified financial profit of the landlord, as her reason for ending this tenancy and issuing a 2 Month Notice. I find that the landlord is not obtaining financial profit from the tenants' rental unit, even though she may be obtaining it from other units in this building, which is her right to do so, as a business. I find that the landlord will suffer a financial loss, by having her son pay a reduced rent of $500.92 per month, instead of the $1,600.00 per month currently being paid by the two tenants, a significant loss of approximately $1,099.08 per month. I find that the tenants' assertion that the

landlord will re-rent the tenants' rental unit for a higher rent, based on other units in the same building paying a higher rent or being advertised for a higher rent, is merely speculation and is not based on facts or any sufficient documentary evidence.

The landlord provided a "rent roll" as evidence, showing that her son pays the lowest rent in the entire building of 11 units, at $500.92 for the only studio apartment at 395 square feet. It also shows that there are two other units on the top floor of the building that pay rent of $1,660.00 and $1,700.00 each, which are close to the tenants' rent of $1,600.00. The tenants claimed that because their rent was the lowest at $1,600.00, they were being removed. However, the other two units, as noted above, are within a $100.00 difference. The majority of the rent amounts in the rent roll, are between $1,600.00 and $1,975.00 each, but the only two units paying above that amount are $2,850.00 for the renovated, furnished 2-bedroom unit #103 and $3,050.00 for the only 3-bedroom unit #3 in the building, at a larger 1,050 square foot size.

I find that the landlord's son, daughter, or other occupants cannot be expected to vacate their units, incur debt, pay a higher rent, or live in other units or other properties, in order to accommodate the tenants' continued tenancy at the rental unit. The landlord provided a copy of e-transfer rent payments made by her daughter and son-in-law of $1,850.00 each month, and copies of two sublease tenancy agreements for $2,500.00, showing that their unit #102 is currently being rented by other occupants.

I also note that the tenants have not resided at the rental unit since 2018, as they have been living and working in Germany, two years prior to the start of the covid-19 pandemic in early 2020. The landlord provided cellular phone screenshots showing that the tenants intended to move to Germany in 2018 and asking the landlord for assistance in subletting the rental unit, which the landlord agreed to do. I find that the tenants failed to provide sufficient documentary and testimonial evidence to indicate if or when intend to return to the rental unit to occupy it on a permanent basis, since they claim they are temporarily out of town. The tenants did not provide any dates of when they intend to return to the rental unit, nor did they provide airplane tickets, or other documentation to indicate their intention to return, despite the lifting of travel restrictions due to covid-19.

I find that the tenants' tenancy is over 10.5 years, from April 1, 2012, to the date of this second hearing, December 1, 2022 and continuing. The tenants failed to identify previous RTB hearings between them and the landlord, or any previous notices to end tenancy issued by the landlord to them. I accept that the landlord's email from March 30, 2020, indicating the tenancy was untenable, was at the beginning of the covid-19

pandemic, and the landlord apologized for her comments and retracted them later. I find that this issue occurred over two years prior to the 2 Month Notice being issued to the tenants in May 2022.

The landlord provided affirmed testimony and an email, dated November 28, 2015, indicating that she issued a 2 Month Notice to previous occupants, for her son to move into unit #1, where he continues to reside in December 2022, over 7 years later. I find that this does not show a pattern of behaviour where the landlord evicts other tenants to re-rent units for higher rent. The landlord indicated that her son currently pays $500.92 per month in rent for that unit.

I find that the parties' written tenancy agreement indicates that rent was $1,500.00 at the start of this tenancy on April 1, 2012, and it has only increased by $100.00 total in the last 10.5 years, despite the landlord being entitled to issue legal notices of rent increase, as per the *Act and Regulation*. I find that while the tenants voluntarily agreed to pay a higher rent of $50.00 extra per month in May 2021, from their previous rent of $1,550.00 to $1,600.00, without the required 3 months notice from the landlord, they were not required to agree and chose to do so. This rent increase was implemented over one year prior to the 2 Month Notice being issued to the tenants on May 31, 2022. I find that this does not show an ulterior or financial motive by the landlord, who has not increased the tenants' rent since May 2021, despite being entitled to do so, by the allowable amount, as per the *Act* and the *Regulation*.

Although both parties submitted and referenced previous RTB decisions regarding other unrelated tenancies and applications, I am not required to consider them and I am not required to follow them as precedent, as per section 64(2) of the *Act*.
However, I note that I was the Arbitrator that presided over a previous RTB hearing for a different tenancy after which I issued a written decision, dated August 2, 2017, for RTB Decision 6289. The tenants provided the previous decision as an online link, not a full paper copy, in their evidence. In that decision, I granted the tenant's application to cancel the landlord's 2 Month Notice and continued the tenancy because I found bad faith on the part of the landlord. I find that the previous decision is not comparable to this current tenancy since I noted the following, in part, at pages 4 and 5 of that decision (my emphasis added):

> *I find that the landlord had an ulterior motive for issuing the 2 Month Notice and it was not issued in good faith.*

> ***The landlord attempted to increase the tenant's rent approximately two weeks before the 2 Month Notice was issued on May 31, 2017.*** *The landlord denied any such discussions between his wife and the tenant, yet the landlord's wife admitted that she discussed an increase in rent with the tenant for $800.00, then $700.00, and finally $500.00 per month.*
>
> *The landlord's wife claimed that it was always the plan for her son to move into the rental unit.* ***However, when her son came to live with the landlord on May 11, 2017, the landlord's wife still proposed a rent increase to the tenant, which would have been unnecessary if the tenant was leaving anyway on September 1, 2017, as claimed by the landlord.***
>
> *Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his burden of proof to show that the landlord's son intends to occupy the rental unit in good faith.*
>
> *Accordingly, I allow the tenant's application to cancel the landlord's 2 Month Notice. The 2 Month Notice, dated May 31, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for landlord's use of property. This tenancy continues until it is ended in accordance with the Act.*

In the previous decision, the landlord discussed a rent increase with the tenant, approximately two weeks prior to the 2 Month Notice being issued, as noted above. In the present case, the landlord discussed, and the tenants agreed, to pay a rent increase over one year prior to the 2 Month Notice being issued. I find that one year is a significantly longer amount of time, and is not comparable to two weeks.
Based on a balance of probabilities and for the above reasons, I find that the landlord's son intends to move into the rental unit in good faith to occupy it for at least six months. I find that the landlord's son qualifies as a close family member and child under section 49 of the *Act*. I find that the landlord has met her onus of proof under section 49 of the *Act*.

I dismiss the tenants' application to cancel the landlord's 2 Month Notice, without leave to reapply. Pursuant to section 55 of the *Act*, I grant an order of possession to the landlord effective two (2) days after service on the tenants. I find that the landlord's 2 Month Notice, dated May 31, 2022, complies with section 52 of the *Act*. The effective date on the 2 Month Notice of July 31, 2022, has long passed, as the second hearing in this matter occurred on December 1, 2022.

At both hearings, I informed the tenants that I could issue a two (2) day order of possession against them, and they repeatedly affirmed their understanding of same, stating that they would abide by my decision and “follow the law.”

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the $100.00 filing fee from the landlord. This claim is also dismissed without leave to reapply.

Conclusion

The tenants’ entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant(s). The tenant(s) must be served with this Order. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme 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: December 02, 2022

Residential Tenancy Branch