



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNL-MT, AAT, LAT, OLC, FFT

### Introduction

This hearing was scheduled to convene at 9:30 a.m. on December 20, 2022 concerning an amended application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- an order cancelling a notice to end the tenancy for landlord's use of property;
- more time than prescribed to dispute a notice to end the tenancy for landlord's use of property;
- an order that the landlord allow access to required services or facilities;
- an order permitting the tenants to change the locks to the rental unit;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenants and the landlords attended the hearing, and the landlord was accompanied by Legal Counsel. The tenants applied to adjourn the hearing, which was not opposed by Legal Counsel for the landlord, and I adjourned the hearing to January 18, 2023 at 9:30 a.m. My Interim Decision was provided to the parties. Also, the landlord's Legal Counsel submitted that none of the tenants' evidence had been received. My Interim Decision stated that any evidence that the parties wished to rely on must be uploaded to the Residential Tenancy Branch portal and be provided to the other party(ies) by no later than 5:00 p.m. on January 11, 2023, which was permitted to be exchanged by email, by consent.

On the second scheduled date both tenants attended the hearing with Legal Counsel. The landlord also attended with Legal Counsel. One of the tenants and the landlord

gave affirmed testimony, and the party's Legal Counsel were given the opportunity to question each of the parties and to give submissions.

No further issues with respect to the exchange of evidence were raised by either party, and all evidence provided has been reviewed and is considered in this Decision.

I alerted the parties to the Rules of Procedure which state that multiple applications contained in a single application must be related. Legal Counsel for the tenants submitted that all of the applications are related.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 23, 2022 was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 12, 2022 was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Act* and in good faith?
- Should the tenants be granted more time than prescribed to dispute the Two Month Notice to End Tenancy for Landlord's Use of Property?
- Should the landlord be ordered to allow access to required services or facilities?
- Have the tenants established that the tenants should be permitted to change locks to the rental unit?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began during the last week of January, 2022 and the tenants still reside in the rental unit. There is no written tenancy agreement, however rent in the amount of \$1,200.00 is payable on the 1<sup>st</sup> day of each month and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, and the landlord resides above a shop on the property.

The landlord further testified that the parties had agreed at the beginning of the tenancy that the tenant was responsible for 50% of the hydro for the property and 100% of the natural gas bills, because the shop does not have natural gas. The sum of \$730.81 remains unpaid. The tenant said that he didn't need to look at the utility bills, so they weren't provided to the tenant. The landlord didn't give written notice 30 days before issuing a notice to end the tenancy in December, 2022, but verbally asked the tenants to pay.

The landlord also testified that he wanted to move back into the rental unit, and served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property on or about August 23, 2022. A copy of 2 pages of a 4-page Notice has been provided by the tenants as evidence for this hearing. It is dated July 31, 2022 and contains an effective date of vacancy of October 1, 2022. The reason for issuing it states: 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), specifying the father or mother of the landlord or the landlord's spouse. It also states that it was attached to the door or other conspicuous place where the tenant resides.

The landlord's Statutory Declaration provided for this hearing was sworn on January 6, 2023 indicating that the landlord's partner and the landlord plan to move into the rental unit, and give care to the partner's mother. The landlord testified that they had been together for 17 years.

The Affidavit of the tenant's partner is dated January 6, 2023 and states that she is an occupant of the rental property commencing in or about the spring of 2017 and had been in a relationship with the landlord since May, 2016. It also states that she, her sister, her mother and the landlord commenced a care conversation in or around August, 2022 due to her mother's condition and age. Her mother lives in a different community, and her changing circumstances have become more urgent, requires frequent medical care. It is the landlord's intention to move into the rental unit.

The tenants have also provided a copy of the first page only of a 3-page 10 Day Notice to End Tenancy For Unpaid Rent or Utilities. It is dated December 12, 2022 and contains an effective date of vacancy of December 12, 2022.

The landlord has also provided a Statutory Declaration which states that as of January 1, 2023 \$7,200.00 was outstanding, which included rent for January, 2023, which was not part of the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities. The landlord agrees that rent was accepted after both notices to end the tenancy were served. The landlord testified that the tenant attended "just now" and paid \$2,400.00 and the

landlord gave a receipt for \$4,800.00 but did not indicate on the receipt that rent is being accepted for use and occupancy only.

The landlord sent a text message to the tenants on or about July 11, 2022, a copy of which has been provided by the tenants for this hearing. The texts show the landlord saying, "very straightforward move," and the tenant replying, "Give me an eviction." The landlord responded again, " you have a big mouth," and "Move." Those text messages were prior to issuing the notices to end the tenancy. The landlord testified that he had a reason to get rid of the tenants prior to issuing the Two Month Notice to End Tenancy for Landlord's Use of Property, and wanted the tenants out.

**The tenant** testified that rent was \$1,00.00 per month, plus utilities, but rent was to include internet and satellite. The landlord cut the internet and satellite before issuing a notice to end the tenancy, and then cut off water and electricity. The tenants had to get internet on their own because the landlord changed the Wi-Fi password, and cable is not an option on the property. There was no water for about a week or 5 days, and then the landlord put a padlock on the outdoor water faucet in the front yard. The tenant called the Residential Tenancy Branch who called the landlord. The landlord came down the driveway yelling and screaming that the tenant wouldn't get away with it. Also, there was no electricity in different rooms, so the tenants used extension cords.

The tenant testified that the landlord did so because he was angry. The landlord's partner questioned the tenant about the tenant's girlfriend wearing a bikini in the pool with children present. The landlord told the tenant not to talk to the landlord's partner about the tenancy because she's not a landlord. Then the landlord yelled at the tenant. The tenant did speak to the landlord's partner, following which the landlord was rude and angry but the tenants didn't know why. Then the tenant's found out that the landlord's partner told the landlord some untruths about what the tenant had said. The landlord apologized later, saying there are 2 sides to every story. The next day, the tenant received the Two Month Notice to End Tenancy for Landlord's Use of Property on the door. Copies of numerous text messages exchanged between the parties have also been provided for this hearing.

The tenant didn't want to pay rent without the landlord providing receipts to show that rent was paid. On November 30, 2022 the tenant provided a letter to the landlord asking for receipts for rents paid in cash from January, 2022 to June, 2022.

After that incident, the landlord was screaming at the tenant outside of the property; calling the tenant a loser, trying to live for free, calling the tenant fat, yelling at the tenant's girlfriend and was very abusive verbally. The landlord's partner threw a handful

of rocks at the tenant and kids. Multiple times the tenant had to call the police; the landlord was rude in front of kids and guests; trying to convince them they shouldn't be friends with the tenant, and said he was sending people to assault the tenant. This has affected the tenant mentally, physically, affected employment and relationships. The tenant has tried to communicate, but it got pushed into this.

The tenant also testified that he paid rent for September 1; October 1; November 1; and December 1, 2022 as soon as he had the ability, but not on those dates.

**The landlord** was recalled, and testified that Internet and cable were offered as gratuitous only, and not ever intended to be included in the rent.

The landlord also testified that water was cut off only while the landlord was replacing a toilet on the property.

#### SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The evidence uploaded supports a missing payment of \$730.00 today. That can be characterized, but the rental agreement is for a whole payment and half goes to payment of the landlord to indemnify the landlord for utilities in his name, so it's still a rental payment.

With respect to the Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord and the landlord's partner have been in a relationship since 2016 and they intend to move into the premises, which relates to the health of the landlord's partner's mother and she needs assistance, not for a medical term, but due to aging and it's becoming urgent. It is clear that they both behaved badly, however the landlord is entitled to move into his premises. The move-in of the landlord and spouse and mother who needs care, are the bona fides of his right to occupy. There is no evidence to the contrary in relation to a spouse, but an absence of evidence that the landlord's partner is a spouse. The only evidence says they've been in a relationship since 2016 and enough evidence exists to find that it is.

#### SUBMISSIONS OF THE TENANTS' LEGAL COUNSEL:

The evidence shows that there is no outstanding rent. Section 46(6) requires a landlord to give notice in writing stating what amount is owed for utilities, and payment must be made within 30 days, and if not, the landlord can file for Dispute Resolution. The landlord has not complied with that provision.

Residential Tenancy Policy Guideline #11 – Amendment and Withdrawal of Notices focuses on withdrawal of a notice to end a tenancy, by an implied waiver, where the

actions of the landlord, such as accepting rent after a notice to end a tenancy has been submitted, the landlord can rebut if the landlord includes on receipts a statement that the money is received for use and occupancy only. Evidence shows that the receipts payments the landlord received do not indicate that the rent was being received for use and occupancy only. By accepting rent, the parties implied that the tenancy continues, and no rent is outstanding presently.

With respect to the Two Month Notice to End Tenancy for Landlord's Use of Property, Residential Tenancy Policy Guideline 2. A. – Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member sets out a 2-part test. Section 49 of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to occupy or have a close family member occupy the rental unit. Despite good faith requirements, there is a solid conclusion that the landlord and partner are in a common-law relationship. Case law provided for this hearing and some Supreme Court Decisions in the Policy Guideline set out what makes a good faith requirement. The landlord must have an honest intention, with no dishonest motive regardless of whether that was the motive. The onus is on the landlord to prove good faith. It also discusses what good faith means; acting honestly and that the landlord intends to do what they say and do not have an ulterior motive and to avoid obligations under the *Act*. Based on the testimony and the text evidence, there is a clear motive, not in good faith.

### Analysis

Firstly, I disagree with the landlord's Legal Counsel that utilities are to indemnify the landlord for utilities in his name and are therefore a part of the rent. The *Act* is specific that rent and utilities are very different, and treated differently in a tenancy.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice, with no ulterior motive.

The Two Month Notice to End Tenancy for Landlord's Use of Property is dated July 31, 2022. It states that the father or mother of the landlord or landlord's spouse will occupy the rental unit. The landlord testified that he will occupy the rental unit, as well as his partner and her aging mother. I question why the landlord would have indicated a

parent of the landlord or the landlord's spouse if he intends to occupy the rental unit, especially considering that the landlord is not married to the landlord's partner.

I also consider the consequences set out in the *Act* if a landlord fails to accomplish the stated purpose within a reasonable time after the effective date of the Notice. The reason must be specific, or the landlord would be entitled under the *Act* to move another parent, or parent or step-parent into the rental unit. I do not believe that is what the legislation intended.

Having read all of the messages exchanged by the parties, it is clear to me that the landlord, although he may intend to occupy the rental unit with his partner and the partner's mother, that the landlord just wants the tenants to move out.

The landlord has not provided any copies of notices to end the tenancy. The tenants have provided pages 1 and 2 only of a 4-page form. The law requires a landlord to give a notice to end a tenancy in the approved form. In this case, I am not satisfied that the landlord has served all 4 pages or a notice in the approved form. Therefore, I cancel the Two Month Notice to End Tenancy for Landlord's Use of Property.

The tenants have also provided two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. One is dated December 12, 2022 and contains an effective date of December 12, 2022, which certainly isn't 10 days. The approved form is 3 pages, and the tenants have provided page 1 only, which does not indicate the reason(s) for issuing it. The law requires a tenant to pay the rent in full within 5 days of receiving such a Notice, but there is no indication as to what amount was owed. I find that the landlord has failed to establish that it was given in the approved form and I cancel it.

The second 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is dated August 23, 2022 and contains an effective date of vacancy of September 2, 2022, for unpaid rent in the amount of \$1,200.00 that was due on August 1, 2022 and unpaid utilities in the amount of \$193.38 following written demand on August 23, 2022. A landlord may treat unpaid utilities as unpaid rent if the landlord has made a written request for the payment at least 30 days prior to issuing such a notice. The landlord testified that he did not give written notice for the payment of utilities prior to issuing it. Also, it is an older version of the approved form and contained 2 pages at that time. However, only 1 page has been provided for this hearing. I am not satisfied that the landlord has served a notice to end the tenancy in the approved form, and I cancel it.

The tenant has also applied for an order that the landlord provide access to services or facilities. The landlord testified that water was turned off while the landlord replaced a

toilet on the property. However, the landlord did not dispute the tenant's testimony that water was off for about 5 days. Also, rather than putting a padlock on the outside tap, the landlord clearly could have given the tenant notice that water wouldn't be available. I find that the landlord did so out of spite, and I order the landlord to ensure that the tenant has water at all times, unless appropriate notice is given for a reasonable reason.

Where a landlord provides services at the beginning of a tenancy, such as internet and satellite, the landlord cannot remove those services in a month-to-month tenancy indicating that they were gratuitous without a written tenancy agreement. I find that the services were included at the beginning of the tenancy and I order the landlord to restore those services to the tenants immediately unless the tenants otherwise agree in writing.

I also order the landlord to comply with the *Residential Tenancy Act* by ensuring that electricity is provided to the tenants; and by providing the tenants with receipts for all payments made in cash.

Allowing a tenant to change locks to the rental unit is a serious issue for safety reasons. In this case, the tenant has not lead any evidence that would suggest that the landlord has entered the rental unit unlawfully, or any other reason to make the order, and I dismiss that portion of the tenants' application.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlord in that amount, and I order that the tenants be permitted to reduce rent by that amount for a future month. Alternatively, the tenants may serve the landlord with the order and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 31, 2022 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 23, 2022 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 12, 2022 is hereby cancelled and the tenancy continues.



I hereby order the landlord to reinstate internet and satellite to the tenants immediately.

I hereby order the landlord to comply with the *Residential Tenancy Act* by ensuring that the tenants have electricity and water, and to give receipts for any payments made by the tenants in cash.

The tenants' application for an order permitting the tenants to change the locks to the rental unit is hereby dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: January 22, 2023

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Residential Tenancy Branch