



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, RR, FFT

Introduction

On September 13, 2022 the tenants filed an application for dispute resolution pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- recovery of the filing fee from the landlords, pursuant to section 72 of the *Act*.

On January 6, 2023 the tenants filed an amendment seeking:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The tenants and an articulated student appearing on behalf of the landlords ("counsel") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

The tenants testified, and counsel confirmed, that the tenants served the landlords with their application for dispute resolution, amendment and supporting evidence. Counsel submitted and the tenants confirmed that the landlords served the tenants with their evidence. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the Notice and recovery of the filing fee for this application.

Issues to be Decided

1. Are the tenants entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
2. Are the tenants entitled to recovery of the filing fee from the landlords, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on or around April 1, 2020. Monthly rent in the amount of \$800.00 is payable on the last day of each month for the following month.

Both parties agree that the subject rental property is a basement suite in a house and that the landlord lives in the main unit about the tenant and there is a second basement suite which the landlord rents out on air bnb.

The landlord entered into evidence a floor plan of the house described above which shows that the main unit is a four-bedroom unit, the subject rental property is a bachelor suite and the second basement suite is a two bedroom suite with a living room, kitchen and bathroom. Both parties agree that the basement suite does not have a kitchen but does have a bathroom. The tenants testified that they use a hotplate for cooking. Counsel submitted that the subject rental property is 200 square feet. This was not disputed by the tenants.

Counsel submitted that the landlord posted the Notice on the tenants' door on August 30, 2022. The tenants testified that they received the Notice on August 30, 2022. The tenants filed to dispute the Notice on September 13, 2022.

The Notice was entered into evidence, is signed by landlord S.W., is dated August 30, 2022, gives the address of the rental unit, states that the effective date of the notice is October 31, 2022, is in the approved form, #RTB-32, and states that the ground for ending the tenancy is that the landlord or the landlord's spouse will occupy the unit.

Counsel submitted that the landlords served the Notice because the landlords intend to use the subject rental property for their own personal use and that the landlords do not have an ulterior motive. Counsel referred to landlord S.W.'s affidavit which states at sections 9-10:

9. The reason for asking the Tenants to leave is because I want to use the Rental Property for myself, and for no other reason.
10. My spouse, [Landlord J.L.] and I are running out of storage space and we intend to use the Rental Property as a place for storage.

Counsel submitted that the landlords reside in the main unit of the house with their daughter, son-in-law and granddaughter. Counsel submitted that the landlords are running out of space in the main unit and have boxes and personal possessions scattered all over the unit. Counsel submitted that the landlord's piano is sitting in the middle of the living room. Counsel submitted that the landlords intend to use the subject rental property for storage and as a music room for the piano to go in.

Landlord S.W.'s affidavit states at sections 14- 15:

14. The current storage arrangement in the Main Residence is causing me grief, anxiety, and frustration. I also believe that all the items strewn across the Main Residence poses a real safety hazard.
15. The entire property, including the basement unit is roughly 1600 sq ft in size. The usable space for the entire family of 5 is roughly 900 sq ft.

Counsel submitted that since April 2020 the landlords have delegated rental tasks to their daughter, and son-in-law ("G.H."). G.H. signed an affidavit which states at section 5-6:

5. The Main Residence where I reside with my wife and in-laws is cramped and in bad shape. There is not enough room to store all the items in the Main Residence.
6. I have taken photos and a video to document the current state of the Main Residence. The photos were all taken January 13, 2023 and the video was taken January 5, 2023.

The above-described photographs attached to G.H.'s affidavit as exhibits show many rooms stacked high with boxes, bins and personal possessions.

Section 13 of G.H.'s affidavit states:

13. I took a video from the Main Floor to the Basement showcasing the current state of the Main Residence and access to the Rental Property. Attached hereto and marked **Exhibit "I"** is the video which I took on January 5, 2023.

The video, noted as Exhibit "I" above shows a crowded living room with a piano against one wall and an usually large stacks of boxes and possessions lining the interior stairs down to the interior door of the subject rental property.

Counsel submitted that the subject rental property is the only basement suite that has direct access to the main house and is considerably smaller than the other basement suite and is not suitable for the landlords' needs. The landlord needs a storage space and music room, not an entire secondary suite complete with kitchen, bedrooms and a living room.

The tenants alleged that the landlords are not acting in good faith and served the Notice because of some disagreements that have arisen between themselves and the landlords. The tenants testified that prior to June of 2022 they had a good relationship with the landlords.

The tenants testified that in June of 2022 they had an altercation with the landlord where the landlord illegally entered their rental unit and slammed the door. The tenants testified that the altercation stemmed from a lock issue with their door. The tenants entered into evidence four videos where people can be seen in a doorway and front entrance, arguing in a language other than English. The tenants did not provide testimony as to who was seen in the video, though presumably the tenants are taking the video and a landlord or landlord family members are the subject of the video.

Counsel submitted that the landlords heard a loud door slam and came down to the subject rental property to investigate and an argument ensued. In the argument each party blamed the other for damaging the door. Counsel submitted that the landlords ultimately fixed the door.

The tenants testified that on July 1, 2022 G.H. informed them of a rent increase that was above the legal limit for 2022. The tenants testified that they requested a face to face negotiation with the landlord but the landlord declined negotiation and promised not to increase the rent. The tenants entered into evidence wechat messages that were translated by a professional translator.

On July 1, 2022 the following messages were exchanged between the tenants and G.H. :

- G.H.: Hua, due to the increase in all kinds of costs, starting from next month, our rent will be increased to \$900. Thanks.
- Tenants: [G.H.], according to BC Government regulations, the upper limit for rent increases in 2022 is 1.5%. Please comply with the Provincial Government's regulations.
- G.H.: In that case, we won't increase the rent, but we will equally share water, electricity, and gas bills and collect your share from you, as for the internet, you may go and order your separate services account. Right now the internet is too slow.
- Tenants: Our oral agreement at the very beginning is that water, electricity, gas, and internet are all included, so you can increase the rent by up to 1.5%, please honour the oral agreement.
- G.H.: Our oral agreement at that time was in consideration of you both having just arrived and neither of you had a job, the waiver was for the sake of maintaining caring and good relationship, it does not mean the bills will never be collected. But right now the prices of all things are going up, including water bills that used to be included in the property taxes but are now collected separately. The property taxes have been increased to more than \$8,000 a year. That is why we are not obligated to continue waiving the bills for you, I am sorry but there is nothing we can do about it.
- Tenants: Our oral agreement at that time is \$800 for the rent including water, electricity, gas, and internet bills. How you considered it is your own business. Under the law, an oral agreement is also an agreement, it is a fact. So to reiterate the agreement between us: you can only increase the rent up to 1.5%, each month's rent includes water, electricity, gas, and internet bills.

- G.H.: Does our oral agreement say water, electricity, and gas bills will never be added?
- Tenants: Please study the law first and then think about whether there is something wrong with your words. We want to establish good relationship with you, but you are always giving us orders with your bullying words and actions, that is why we have to play by the rules according to government regulations and the law.
- Tenants: If you, as the landlords, want to consult with us on increasing the rent above the rent increase upper limit set by the Government, then we have the right to propose conditions as tenants.
- G.H.: That is OK, [redacted] told me that you said last time that the rent could be raised in spite of government regulations, and I am just consulting with you about this, as you do not agree to it, we will not increase the rent, don't worry about it and continue residing here.
- Tenants: Last time we said that rent increase could exceed the upper limit set by the Government, that was because we wanted to talk to you about the conditions for the rent increase. But at that time, you did not give us any response to continue the consultation. Today you said that you wanted to increase the rent by \$100, our attitude is the same as last time, that is, it could be discussed, but we have conditions for the rent increase that could be discussed in person, because we feel that text messaging is rather cold, easily causing emotional misunderstanding, aggravating our conflicts. If you don't want to talk about the rent increase in person, then we just play by the rules according to government regulations and the law, that is, \$800 in cash for the rent each month including water, electricity, gas, and internet bills.
- G.H.: No problems, we will not increase the rent, don't worry about it and continue residing here.

The tenants testified that if the landlords had wanted to move into the subject rental property then they wouldn't have bothered trying to increase the rent.

Counsel submitted that the landlords did not know about the regulations about the amount of permitted rent increases, and when they learned of them, they did not

pursue the rent increase. Counsel submitted that this is not a sign of bad faith but landlords learning the law.

The tenants testified that on August 3, 2022 the landlords terminated their internet without notice. Tenant H.T. testified that he is a software engineer who works from home and that internet is very important to him. The tenants testified that the landlords denied cutting off the internet.

The tenants entered into evidence translated text messages which show that on August 5, 2022 the tenant inquired with the landlord as to when the internet would get fixed. G.H. responds that an internet technician is coming "next Tuesday". The tenants respond that they plan to install their own WiFi network to avoid the internet interruptions from the landlords' internet provider. G.H. responds that that is a good idea.

Counsel submitted that the landlords and the tenants share internet and that the landlords internet stopped working at that time as well and that the landlords did not cause the internet to stop and took steps to restore the internet.

G.H.'s affidavit states at section 16:

16. The Tenants did not show appreciation despite the landlord's goodwill and my attempts to fix the lock and restore the Wi-Fi, which were all caused by no fault of the landlord or myself.

The text messages show that:

- on August 6, 2022 the tenants informed the landlord the name of the provider they hired to install the internet, and
- on August 9, 2022 the tenants informed G.H. that landlord S.W. refused to allow the service provider to install the internet.

G.H. responded on August 9, 2022:

I was driving moments ago and could not get the phone call, it is not disallowing you to install it, rather you may make another appointment between 8AM and 10AM, after 10 o'clock in the morning, I have to go to work. The technician won't be let into the household because nobody at home speaks English.

The text messages show that the tenants then made a new appointment with the internet technician for August 14, 2022 and informed G.H. of same on August 10, 2022. The text exchange to August 11 at 8:34 am was entered into evidence. G.H. did not respond via text in that time period. The tenants written submissions state that the internet was successfully installed on August 14, 2022.

The tenants submitted that the landlords gave them an informal two month notice to end tenancy on August 12, 2022 before serving the official Notice on August 30, 2022.

The tenants testified that the landlord rents out the second basement suite on air bnb as well as a carriage house. The tenants testified that the landlords could use the untenanted secondary suite or carriage house for storage or the piano. The tenants testified that they believe that its unreasonable to evict them to use their space as a piano room.

Counsel submitted that the second basement suite and the carriage house are not comparable to the subject rental property because they are significantly larger full suites that have kitchens, bathrooms and living rooms. Counsel submitted that the second basement suite and the laneway house do not have direct access to the main house and that the subject rental property has a door leading directly into the main suite.

Counsel submitted that the subject rental property is appropriate for the landlord's needs, whereas the other suites are not. Counsel submitted that the subject rental property is not suitable for Airbnb rentals because it does not have a kitchen and since is it attached to the main suite via a door, there are security issues present.

The tenants testified that they do not believe the square footage of the entire house is 1600 square feet and that it is closer to 2,100 square feet. The tenants testified that if the landlords occupied the second basement suite or the laneway house the landlords would not be cramped.

The tenants written submissions states that:

- the June incident constituted illegal entry and harassment and “was the Landlords’ intention to force the Tenants to move out by themselves.”
- “It is illogical for the Landlords to ask for a rent increase around one and a half months before the eviction notices were issued.”
- “The Landlords let the Tenants “live here without worrying” after promising not to increase the rent. It is unreasonable to abruptly terminate the WiFi service for the tenants one month later.”
- If the Landlords planned to occupy the Subject Rental Unit in good faith, it is illogical for the Landlords to terminate the WiFi service for the Tenants and permit them to install the Internet service. This will only increase the difficulty for the Tenants to find a new rental place and help nothing to the Landlord's occupancy.

Counsel submitted that the landlords did not terminate the tenants’ wifi and since they share the wifi with the landlord, this would not have served the landlord. Counsel submitted that there is no connection between the proposed rent increase, door problem or wifi problems.

Analysis

Based on the Notice entered into evidence and the testimony of both parties, I find that service of the Notice was effected on the tenants on August 30, 2022, in accordance with section 88 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a)the individual's parent, spouse or child, or (b)the parent or child of that individual's spouse.

Residential Tenancy Policy Guideline 2A states that:

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement.

....

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.

....

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

Based on the submissions of counsel, the affidavits entered into evidence, the photographs and video of the landlords' main unit, I find that the landlords have serious storage issues which has resulted in boxes, bins and other possessions lining stairways and bedrooms. I accept the landlord's statement found at section 14 of landlord S.W.'s affidavit which states;

14. The current storage arrangement in the Main Residence is causing me grief, anxiety, and frustration. I also believe that all the items strewn across the Main Residence poses a real safety hazard.

I find that the landlords honestly intend to use the subject rental property for storage and a piano/music room. I find that the landlords storage issues are real and present.

The tenants testified that the landlords are acting in bad faith as shown by three incidents, the door argument in June 2022, the attempted rent increase in July 2022 and the wifi issues in August 2022. Upon review of all the testimony and submissions and documentary evidence presented, I find, on a balance of probabilities, that the above issues are common tenancy related issues that arose out of the standard landlord tenant relationship. I find that they do not constitute bad faith. I will address each issue in more detail below.

Upon review of the untranslated videos of the June 2022 incident, I find that the parties had an argument in the doorway and front entrance of the subject rental property. Given the heat of the moment clearly evident in the videos, I do not find that this was a planned altercation aimed at having the tenants leave on their own accord. I find it more likely, that this was an unplanned argument that was recorded by the parties.

I find that the text message exchange regarding a rent increase reproduced above shows that the landlord requested a \$100.00 per month rent increase which the tenants did not agree to. The text messages show that the landlord tried to increase the tenants' payment of utilities, which was also not agreed to by the tenants. The text messages show the tenant explaining the law to the landlords, who, in the end, agreed not to increase rent or utilities. I do not find that the tenants' refusal to increase the rent and or utilities lead to the service of the Notice as the issue appeared resolved without hostility from the landlord. I accept counsel's submissions that upon learning of the tenancy rules, the landlord did not pursue the matter further.

I find that the timing of the Notice one and a half months after the tenant declined to pay rent over the maximum allowable increase is not an indicator of bad faith and more likely than not, is a result of the landlords' increasing anxiety over the storage crises at the main unit of the house.

I find that the wechat messages entered into evidence by the tenants supports the landlord's position that they did not shut off the internet and were themselves also experiencing an outage. As noted in the August 5, 2022 wechat message, G.H. stated that an internet technician was scheduled to investigate the issue "next Tuesday". I find that at no point did the landlord refuse to allow the tenants to install their own internet, but requested the tenants provide notice of the date and time they required access to the landlords' unit. I find this to be a reasonable request.

From the text messages it does not appear that the tenants gave notice to the landlords of their need to access the landlord's unit on August 9, 2022, just that at some point access may be required. I find that given the language barrier between the landlords and the technicians, it was not unreasonable of the landlords to deny the unscheduled access on August 9, 2022. I find that the successful internet installment on August 14, 2022 shows the landlord's willingness to allow access when scheduled.

The tenants written submissions state that the landlords served them with two months notice before the official Notice was served. The tenants proceeded to install the new

internet when they were aware that the landlords planned on using the subject rental property for their own use. I find that the tenants choice to pursue separate internet when they were aware of the landlords plans to reclaim the subject rental property does not point to bad faith on the part of the landlord.

As stated earlier in this decision, Residential Tenancy Policy Guideline #2A states:

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.

Based on counsel's submissions and the floor plan entered into evidence, I find that the second basement suite and the laneway house are substantially larger than the subject rental property and have kitchens and bedrooms, and that the subject rental property is the only unit with inside access to the subject rental property. I find that the second basement suite and the laneway homes are not comparable rental units to the subject rental property.

Based on landlord S.W. and G.H.'s affidavits and the submissions of counsel, I find that the landlords have proved, on a balance of probabilities, that they intend to use the subject rental property for their own personal storage use and as a music room. Based on the foregoing, I find that the tenants are not entitled to a cancellation of the Notice. The tenants application to cancel the Notice is dismissed without leave to reapply.

When a tenants' application to dispute a landlord's notice to end tenancy is dismissed, section 55(1) of the *Act* requires me to grant an order of possession if the landlords' notice to end a tenancy complies with section 52 of the *Act*.

After reviewing the Notice submitted into evidence, I find that the Notice complies with section 52 of the *Act*. As a result, I find that the landlords are entitled to an Order of Possession.

As the tenants were not successful in their application for dispute resolution, I find that they are not entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55(1) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants 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: January 31, 2023

Residential Tenancy Branch