



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, DRI, OLC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on October 12, 2022, wherein the Tenants requested the following relief:

- an order canceling a 2 Month Notice to End Tenancy for Landlords' Use, issued on October 8, 2022 (the "Notice")
- an order that the Landlords comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement; and
- disputing a rent increase.

The hearing of the Tenants' Application was scheduled for teleconference hearing at 9:30 a.m. on February 24, 2023. Both parties called into the hearing. The Tenant F.A. called in on his own behalf and was assisted by S.K., a Support Worker, who also provided translation services. Both Landlords called into the hearing. Both parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties'

respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order canceling the Notice?
2. Are the Tenants entitled to an order that the Landlords comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?
3. Should the Tenants be obligated to pay the requested rent increase?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlords presented their evidence first.

The Landlord, H.C., testified as follows. He confirmed that this tenancy began July 15, 2020. The rental unit is a three bedroom home. The rental property also has a separate rental unit which is to the back of the subject rental unit. Monthly rent is \$1,650.00 per month. The Tenants are also obligated to pay 65% of the hydro, and 70% of the gas. In the first contract the water was included. He stated that when the Tenants began farming, they agreed to pay 70% of the water bill. The Landlord confirmed that the other tenant pays the balance, but the utilities are in the Landlord, H.C.'s name.

The Landlord alleged there are three rental agreements.

- The first agreement which is dated July 15, 2020 (the “July 2020 Agreement”) and which provided that rent was \$1,650.00 and utilities were included.
- The second agreement, which is dated August 1, 2020 (the “August 2020 Agreement”). The Landlord stated that this agreement was only created because the Tenants lost the first agreement. The Landlord testified that this agreement provided that the rent was \$1,650.00 and the utilities were included.

- The third agreement, which is dated August 1, 2021 (the “August 2021 Agreement”). This agreement provided that the Tenants were to pay \$1,650.00 in rent and a higher percentage towards the utilities. The Landlord testified that pursuant to this agreement the Tenants were to pay 75% of the hydro, and 80% of the gas and 80% of the water bill.

The Landlord testified that although the August 2021 Agreement provides that the tenancy was to come to an end, he verbally agreed they could stay as long as they wanted and until the Landlord issued a 2 Month Notice to End Tenancy.

The Landlord testified that he served the Notice on the Tenants on October 8, 2022. The reasons cited on the Notice were that the Landlords’ father or mother would be moving into the rental unit. In this respect the Landlord testified that his spouse’s parents wish to move into the rental unit. He stated that they are older and are currently living in another community, approximately 55 minutes away, and wish to move closer to the Landlords for support. The Landlord stated that the other rental unit will be occupied by the caregiver and he has issued a 2 Month Notice to End Tenancy for that unit, and everything is going peacefully in terms of ending that tenancy.

The Landlord stated that his spouse’ parents are currently living in their daughter’s basement suite and are having difficulty navigating stairs. The subject rental unit is one level which will be easier for them.

The Landlord testified he served the Notice on the Tenants and then because he was mad he then asked the Tenants to pay \$2,300.00 in rent. He claimed that he did not know when he sent the message asking them to pay more in rent, although he insisted during his testimony before me that it was after he issued the Notice.

The Landlord stated that the Tenant tried to find alternate housing and had contacted B.C. Housing but they were ineligible as they have too many occupants (6 children and 2 adults) for a 3 bedroom home.

In response to the Landlord’s testimony, the Tenant, H.C., testified as follows. The Tenant stated that they received a request for more rent from the Landlord and when he refused to pay more rent, the Landlord issued the Notice. He claimed that he receive a whatsapp messages from the Landlord on October 2, 2022. A copy of this message was provided in evidence before me.

In this message the Landlords writes:

"I am dropping new rent agreement start December 2022 rent will be \$2300 plus hydro, gas, water bill thanks for let me know if you want to do carry on new lease"

The Tenant responded:

"You do not have the right to raise this amount in law"

"I pay you more, as the law says, other than that, I don't pay"

To which the Landlord responded:

Your lease expire check it out I know the law"

Introduced in evidence was a message from the Tenant's support worker to the Landlord wherein the worker requested a meeting with the Landlord to discuss the recent rent increase. This message reads as follows:

"Hi [S.], My name is [S.] and I work with [D]. I am the support worker for [F], your tenant. I am reaching out for you to arrange for a meeting with [F.] to discuss the recent proposed rent increase. The purpose from the meeting is to reach a common ground that works for all parties. [F.] can take a day off on October 6th. I can arrange for the meeting at my office at 9:30 or 10:00 am. Would you be able to join us?"

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities I find as follows.

Ending a tenancy is a significant request and must only be done in accordance with the Act. In this case the Landlords seek to end the tenancy pursuant to section 49 which reads in part as follows.

Landlord's notice: landlord's use of property

...

(3)A landlord who is an individual 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.

As noted above, a Landlord who wishes to end the tenancy for their own use, must issue the Notice in *good faith*.

Residential Tenancy Branch Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member provides in part as follows:

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 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 other ulterior motive.

In this case I find the Landlords did not issue the Notice in good faith. Rather, I find they had an ulterior motive and issued the notice in retaliation for the Tenants refusing to pay their requested rent increase of \$2,300.00 from the original rent of \$1,650.00.

The Landlord, F.A., testified that he sent the message to the Tenants requesting the rent increase *because* he was angry they would not just move out. When asked to be specific about the date he made the rent increase request he claimed he did not know although he insisted it was after he issued the Notice. I do not accept the Landlord's testimony in this regard.

The Tenant, H.C., testified that F.A. asked for a rent increase and when he refused the Landlords issued the Notice. I accept the Tenant's testimony in this regard and find it more likely than the Landlord's version of events. Documentary evidence submitted by the Tenants shows that their advocate asked the Landlord for a meeting on October 6, 2022 to discuss the proposed rent increase; logic dictates that such a request would have been made prior to October 6, 2022 as it makes no sense to request a meeting in the past. This clearly supports a finding that the rent increase request was made prior to the issuance of the Notice which was done on October 8, 2022.

I therefore grant the Tenants' request for an Order canceling the Notice. The tenancy shall continue until ended in accordance with the *Act*.

The Tenants also requested an Order that the Landlords comply with the *Act*, the *Regulations* and the residential tenancy agreement. In this respect the Tenants ask that I confirm the contents of the August 2020 tenancy agreement.

I find that the August 2020 tenancy agreement was merely a replication of the original July 2020 agreement. The Tenants did not take issue with this characterization. This agreement provided that the tenancy was on a month to month basis. The agreement further provides that rent is \$1,650.00 per month and the Tenants are responsible for paying 65% of the hydro and 70% of the gas; all other utilities, including water were included in the payment of rent. (Notably, although the Landlord testified before me that the August 2020 agreement included utilities in the payment of rent, the agreement clearly sets out the Tenants' contributions.)

The Landlord testified that the August 2020 agreement was replaced by the August 2021 agreement. This agreement provided that the tenancy was for a fixed term and increased the Tenants' contribution/percentage towards hydro to 75% and gas to 80% and also provided the Tenants were to pay 80% of the water. On the Application for Dispute Resolution, the Tenant alleged the August 2021 tenancy agreement was forged, and that they did not agree to the contents.

During his testimony the Landlord, C.A., confirmed that the tenancy was a month to month tenancy and not for a fixed term. I find the Landlord's testimony inconsistent with the contents of the August 2021 agreement and as support for the Tenants' submission that the August 2021 agreement is not an accurate representation of the

parties' agreement. I am not persuaded that the August 2021 agreement represents the agreement between the parties and I find it is of no force and effect.

I therefore confirm the August 2020 tenancy agreement. I find that this tenancy is a month to month tenancy and is not for a fixed term. Monthly rent is \$1,650.00. The Tenants are responsible for paying 65% of the hydro, 70% of the gas; water is included.

The Landlord may not raise the rent unless they do so in accordance with the *Act*, and the *Regulations*. The Landlords must also provide the Tenants with copies of the hydro and gas utility as and when received and shall not issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities until a formal demand for payment has been issued as required by section 46(6) of the *Act*.

Conclusion

The Tenant's request for an Order that the Notice be cancelled is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's request for an Order disputing an a rent increase, and an Order that the Landlord comply with the *Act*, the *Regulations*, and/or the tenancy agreement is granted. The August 2020 tenancy agreement is confirmed; the tenancy is a month to month tenancy; monthly rent is \$1,650.00 per month and the Tenants are responsible for 65% of the hydro and 70% of the gas utility. All other utilities are included.

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: March 24, 2023

Residential Tenancy Branch