



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, PSF, OLC, FFT

### Introduction

This hearing was scheduled to convene at 11:00 a.m. on March 10, 2023 concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of the property; an order that the landlords provide services or facilities required by the tenancy agreement or the law; an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlords joined the call.

The tenant served the landlords by registered mail, and was given the opportunity to provide proof of such service after the hearing had concluded. I now have 2 Canada Post cash register receipts both dated November 18, 2022 for registered mail, and I am satisfied that both landlords have been served in accordance with the *Act*.

The landlords have not provided any evidence, and the tenant advised that all of the tenant's evidence was served with the Notice of Dispute Resolution Proceeding on November 18, 2022. I accept that, and all evidence of the tenant has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Should the Two Month Notice to End Tenancy For Landlord's Use of Property dated May 30, 2022 be cancelled?

- Has the tenant established that the landlords should be ordered to provide services or facilities required by the tenancy agreement or the law, specifically clean, healthy drinking water?
- Has the tenant established that the landlords should be ordered to comply with the *Act* or the tenancy agreement, specifically to provide the tenant with quiet enjoyment of the rental unit?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on February 1, 2021 and the tenant still resides in the rental unit. There is no written tenancy agreement, however rent in the amount of \$2,500.00 is payable between the 1<sup>st</sup> and 10<sup>th</sup> days of each month, as agreed mutually, and there are no rental arrears. The landlords did not collect a security deposit or a pet damage deposit from the tenant. The rental unit is a 4-bedroom dwelling, and there is another suite in the building as well as a veterinarian clinic.

The tenant further testified that the tenant was personally served with a Two Month Notice to End Tenancy For Landlord's Use of Property on May 30, 2022, and a copy has been provided for this hearing. It is dated May 30, 2022 and contains an effective date of vacancy of August 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 landlord or the landlord's spouse. It names a landlord, who is not the landlord, and the tenant does not know who the person is. The tenant is a witness to a case against the landlord by the College of Veterinarians about business practices, and the Supreme Court documents say that there is only 1 owner. A copy of a Land Title Search document has also been provided as evidence for this hearing showing the registered owners are PSM and ASM, as a joint tenancy.

The landlord told the tenant that he wants more money, \$5,000.00 for the rental unit and has sent people to the rental unit to live with the tenant, saying that the landlord told them they could live there. Now the landlord wants to move in another person who says he now owns part of the property, but is not on title.

The landlord sent a fellow to the rental unit who demanded to see the inside, but the tenant didn't know who he was and no notice to enter had been given. He said that the tenant was disrespectful, but that's not the first time the landlord has done so. Several

times over the last 2 years the landlord has sent people. Previous tenants had the same problem from the landlords, as well as tenants in the unit above. The landlord says that he makes the law. The tenant seeks an order that the landlord refrain from sending people to the rental unit and provide the tenants with quiet enjoyment of the rental unit.

The tenant also testified that the tenant has asked the landlord to fix the plumbing since the tenant moved in. The tenant was without heat from February, 2022 to November, 2022. The landlord took the furnace out, promising a gas furnace in place of the oil furnace, then said he wouldn't pay for that anymore. The landlord didn't bring a furnace until after the tenant advised that the landlord could be fined \$5,000.00 for no heat.

The landlord also removed dumpsters from the rental property and there is no longer any garbage pick-up. That was a service that the tenant had at the beginning of the tenancy which is now removed.

Photographs have been provided by the tenant which the tenant testified are the back bedroom of the downstairs, showing brown liquid running down a large pipe or pipes. The tenant testified that the toilet pipe from the upstairs bathroom has been leaking and the tenant has stopped using that bedroom. There is quite a smell, mouldy and musty. The landlord has been notified numerous times, who says he will send people, such as a plumber, but no one shows up. The tenant had the water tested, and was found to have 3 times the allowable level of arsenic. That was fixed, but now the water is slimy and causes sores on the tenant's scalp.

### Analysis

Firstly, 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 establish good faith intent to use the rental unit for the purpose contained in the Notice.

In this case, the landlords did not issue the Notice, but a random person who is not known to the tenant. Further, the landlords did not attend the hearing to provide any information about the reason for issuing it or any good faith intent. Therefore, I cancel it and the tenancy continues until it has ended in accordance with the law.

I also accept the undisputed testimony of the tenant that the landlord has sent people to live with or replace the tenants without a proper notice to end the tenancy. That is contrary to the law. The *Act* states that a landlord must provide quiet enjoyment of a rental unit to a tenant:

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I order the landlords to ensure the tenant's right to quiet enjoyment is protected as stated above.

The law also requires a landlord to repair and maintain rental accommodation:

### **Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I order the landlord to hire and retain the services of a professional plumber or contractor to repair the leaks and ensure the water in the rental unit is healthy and usable. If the landlord fails to ensure those repairs are made by no later than March 31, 2023, the tenant will be at liberty to apply for monetary compensation for the landlord's failure to provide clean water and for breach of this order.

I also accept the undisputed testimony of the tenant that the landlords have removed the dumpsters that were included at the beginning of the tenancy. I order the landlord

to replace the dumpsters by the end of March, 2023, failing which the tenant will be at liberty to apply for monetary compensation for the costs associated with getting rid of refuse from the rental unit, which may include mileage and/or loss of use of the facility.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlords in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may serve the order on the landlords 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 May 30, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby order the landlord to refrain from allowing any persons to attend at the rental unit, and to comply with Sections 28 and 29 as set out above.

I order the landlord to hire and retain the services of a professional plumber or contractor to repair the leaks and ensure the water in the rental unit is healthy and usable. If the landlord fails to ensure those repairs are made by no later than March 31, 2023, the tenant will be at liberty to apply for monetary compensation for the landlord's failure to provide clean water and breach of this order.

I order the landlord to replace the dumpsters by the end of March, 2023, failing which the tenant will be at liberty to apply for monetary compensation for the costs associated with getting rid of refuse from the rental unit, which may include mileage and/or loss of use of a facility.

I hereby grant a monetary order in favour of the tenant as against the landlords 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: March 14, 2023

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Residential Tenancy Branch