



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application, filed on November 9, 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 October 24, 2022, and effective December 31, 2022 ("2 Month Notice"), pursuant to section 49.

The landlord, the landlord's lawyer, the tenant, and the tenant's lawyer attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 61 minutes from 9:30 a.m. to 10:31 a.m.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord confirmed that she owns the rental unit. She provided the rental unit address. She stated that her lawyer had permission to represent her at this hearing. She identified her lawyer as the primary speaker for the landlord at this hearing.

The tenant stated that his lawyer had permission to represent him at this hearing. He identified his lawyer as the primary speaker for the tenant at this hearing.

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 this

hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

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

Both parties confirmed that they did not want to settle this application, they were ready to proceed with this hearing, and they wanted me to make a decision. Both parties were given multiple opportunities to settle this application and declined to do so. Both parties were given additional time during this hearing and discussed settlement but declined to settle this application.

I repeatedly cautioned the tenant that if I dismissed his application without leave to reapply, I would uphold the landlord's 2 Month Notice, end the tenant's tenancy, and issue a two (2) day order of possession against the tenant. The tenant repeatedly affirmed that he was prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlord that if I cancelled her 2 Month Notice, I would not issue an order of possession to her against the tenant, and this tenancy would continue. The landlord repeatedly affirmed that she was prepared for the above consequences if that was my decision.

Preliminary Issue – Service of Documents

The landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant's lawyer confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's evidence.

The landlord testified that the tenant was served with a copy of the landlord's 2 Month Notice on October 25, 2022, by way of registered mail. The tenant confirmed receipt of the landlord's 2 Month Notice on the above date, by way of the above service method. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on October 25, 2022.

The tenant's lawyer confirmed that the tenant filed this application on November 9, 2022, to dispute the 2 Month Notice.

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?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. The tenant began residing at the rental unit on September 1, 2015, pursuant to a written tenancy agreement, for a fixed term of one year, after which it became a month-to-month tenancy, with the former landlord. The landlord purchased the rental unit in 2021 from the former landlord, did not sign a new tenancy agreement with the tenant, and the landlord initialled the original tenancy agreement between the tenant and the former landlord. Monthly rent in the current amount of \$3,100.00 is payable on the first day of each month. A security deposit of \$1,550.00 was paid by the tenant to the former landlord and it was transferred to the landlord, who continues to retain this deposit in full. The tenant continues to occupy the rental unit, which is the upper suite of a house, where the landlord occupies the basement suite, at the same residential property.

A copy of the landlord's 2 Month Notice was provided for this hearing. Both parties agreed that the effective move-out date on the notice is December 31, 2022, indicating the following reason for seeking an end to this tenancy (which was read aloud by the landlord during this hearing):

- *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 landlord or the landlord's spouse.*

The landlord testified regarding the following facts, in response to questions from her lawyer. She bought the house to be close to her family. She has two sisters, one brother, and her mother. Her mother rotates living with the landlord and her siblings. When she bought the house, the tenant was already living in the upper unit of the house. The landlord reviewed the tenancy agreement between the former landlord and the tenant, before she purchased the property. The tenancy agreement indicates it was a one-year fixed term and became a month-to-month tenancy in 2016, which has continued to date. The landlord has been living in the basement of the same house, and she spent money to make it her living space. It is too cold in the winter and damp in the summer in the basement. She got very sick and has had a cough that has not gone away. Her mother is not able to stay with the landlord because it is too cold and uncomfortable for her in the basement. The landlord has been staying away from the house and has been living with other family members. In summer 2022, the landlord began having regrets living in the basement, and decided to end the tenant's tenancy. The landlord wants to move upstairs in the tenant's rental unit, and leave the basement. The tenant raised an issue regarding roommates, in his application. There is no reference to roommates in the tenancy agreement. The landlord has no issues with the tenant having roommates. The tenant began having roommates upstairs.

The landlord stated the following facts, in response to questions from her lawyer. The landlord bought the house in 2021 and went on a holiday in October 2021. When the landlord returned, the tenant told her that he got a roommate, who was causing problems upstairs. This roommate attempted suicide, there was blood all over the place, including the walls, counter, and floor, and the tenant said he could not find his roommate. The landlord was worried and afraid, so she put cameras in her basement suite. The landlord discussed the issue with the tenant and said that she wanted to be involved in screening his roommates. The tenant agreed to notify and consult the landlord before getting any roommates. In August 2022, the landlord discovered there were two new roommates upstairs with the tenant and the landlord was not consulted. The tenant told the landlord that he was picking up his roommates at the airport. The landlord found out from the first roommate that the second roommate was coming. The landlord discussed the issue with the tenant and received a letter from her insurance company. The landlord's insurance broker told her that the current insurance policy at the property, covered the landlord, the tenant, and one other person. The tenant's second roommate was not covered by the landlord's insurance policy. The tenant refused for his second roommate to leave and said he would go to arbitration over the issue because he said it was covered by his tenancy agreement, which is not true. The tenant claimed that the previous landlord sent a text to the tenant, and they had a verbal agreement for the tenant to have up to two roommates at the rental unit. The landlord

intends to live at the rental unit when the tenant vacates. The landlord is aware that the law requires a good faith intent for her to live at the rental unit for six months.

The tenant's lawyer made the following submissions. Section 49 of the *Act* requires the landlord to have good faith in order to end this "exemplary eight-year tenancy. The tenant says that there is no good faith and the landlord is attempting to defraud and deceive him. The landlord has an ulterior motive to re-rent the four-bedroom house. The rent has been stable at \$3,100.00 per month, since September 2015. This is a four-bedroom unit on the west side of the city, which has seen "staggering increases" in rent. The landlord made significant upgrades to the entire property and renovated the basement. It is not a "musty old basement," since it is newly renovated. The landlord has a construction area around the garage because she is intending to build a laneway house and has made significant upgrades. The landlord purchased the property as an "investment vehicle" and her reasons are "weak and have shifted and morphed." The 2 Month Notice was issued to the tenant because he would not comply with the landlord's "unreasonable" demand to evict one of his two roommates. The landlord has "insufficient insurance" and is "retaliating" against the tenant. The landlord is attempting to "unilaterally" alter the terms of the tenancy agreement. The landlord is a single individual intending to occupy a four-bedroom house. The landlord made no mention of her family staying with her or of using the upstairs and downstairs areas, as a single home.

The tenant's lawyer stated the following facts. The landlord's health issues were only mentioned after the 2 Month Notice was issued. The landlord's doctor's note, which was provided by the landlord, is "non-committal, vague," does not offer a "diagnosis" or a "prescription," and is a "sick note request." The weight of this note is "weak." The landlord is a regular smoker, and this is the reason for her cough, not the "brand new basement." It is a suitable sized basement for the landlord. The landlord has taken no positive steps to enforce the 2 Month Notice. The landlord accepted rent each month from the tenant, as usual. The landlord is attempting to "intimidate and bully" the tenant with a 2 Month Notice, in order to comply with her "insufficient insurance." Residential Tenancy Policy guideline 2A discusses the "dishonest motive" of a landlord. There are questions regarding the landlord's credibility. The landlord provided no evidence that she intends to occupy the property in good faith. The contract of purchase and sale between the former landlord and this landlord means that she inherited all the "rights and obligations" of the former landlord, including a previous agreement for the tenant to have two roommates living with him. The landlord has no right to restrict the tenant from having roommates as they are only occupants, not tenants, as per Residential Tenancy Policy Guideline 13. It is not unreasonable for three people to occupy the four-

bedroom house. There is a housing affordability crisis in the city. According to the national occupancy guidelines, two people are permitted to occupy one bedroom, so that means eight people can occupy the four-bedroom house. There is no maximum number of occupants indicated in the tenancy agreement, and the landlord has not amended this agreement, to include it. Paragraph 8 of Residential Tenancy Policy Guideline 13 states that if there is a lack of occupancy clause, then it is implied that other occupants can move into the rental unit. There is only one tenant at the rental unit, since the roommates are occupants, not tenants. The landlord knew her insurance policy covered only the tenant and his relatives. The landlord provided a copy of the insurance policy. The landlord's insurance agent recommended single family occupancy at the property. The landlord is angry with the tenant who did not evict his second roommate. The landlord did not offer the basement unit to the tenant.

The landlord's lawyer stated the following facts in response to the submissions of the tenant's lawyer. This is a long-term tenancy, but it is currently a month-to-month agreement. The tenant did not make a request to extend his fixed term. The tenant has had several months to find other accommodations since the 2 Month Notice was issued by the landlord. The landlord is not evicting the tenant's roommate. The tenant agreed that the landlord could screen his roommates. The landlord has no issue with the tenant having roommates. The roommate issue is "irrelevant." The landlord has a "genuine good faith intention" regarding the 2 Month Notice. The landlord has no ulterior motives and there is no evidence of this. The landlord and her mother do not feel comfortable living in the basement at the property. The landlord is in an uncomfortable situation in her own home. The landlord is aware that "sanctions" will be applied if she lives at the rental unit for less than six months.

The landlord stated the following facts in response to my questions. She intends to move into the rental unit for at least six months or longer. She is aware of the 12 month rent penalty that could be imposed against her for not using the rental unit for the reason indicated on the 2 Month Notice. She accepted rent from the tenant after the effective date on the 2 Month Notice. The tenant leaves his rent cheque on the dryer in the laundry room, when he pays rent each month. The landlord has not had any communication with the tenant since the 2 Month Notice was issued. She does not issue rent receipts to the tenant. She did not cancel her 2 Month Notice against the tenant.

Analysis

Application and Rules

The tenant, as the applicant, received an application package from the RTB, including instructions regarding the hearing process. The tenant received a document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing this application. This document contains the phone number and access code to call into this hearing.

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 and links to the RTB website and *Rules* are also provided in the NODRP. I informed both parties that I had 30 days to issue a written decision after this hearing. Both parties affirmed their understanding of same.

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

This hearing lasted 61 minutes, which is more than the 60-minute maximum hearing time. I informed both parties that they were not required to rush through their submissions because the hearing could be adjourned to a later date if it did not complete within the 60-minute hearing time.

The tenant attended this hearing with a lawyer and had the benefit of legal advice from his lawyer. The tenant and his lawyer had ample time and multiple opportunities to present the tenant's application and respond to the landlord's claims. I repeatedly asked the tenant and his lawyer if they had any other information to present and if they wanted to respond to the landlord's evidence.

I find that the tenant failed to sufficiently review and explain the documents he submitted with his application. The tenant did not testify at this hearing, only his lawyer provided verbal submissions. The tenant's lawyer simply referenced the landlord's documents submitted for this hearing.

Findings

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within 15 days after he received the notice. The tenant claimed that he received the notice on October 25, 2022. The tenant filed this application to dispute the notice on November 9, 2022.

Therefore, the tenant is within the 15-day time limit under the *Act*. Accordingly, where the tenant applies to dispute notice by the deadline, the burden of proof is on the landlord to prove the reason on the notice. I informed both parties of the above information during this hearing and they affirmed their understanding of same.

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.

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 provided sufficient testimonial and documentary evidence that she intends, in good faith, to occupy the rental unit for at least 6 months, after the tenant vacates, pursuant to the 2 Month Notice.

The landlord is the owner of the rental unit and qualifies as a landlord to move into the rental unit, pursuant to section 49 of the *Act*. I find that the landlord has no ulterior motives 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 affirmed testimony of the landlord, the affirmed submissions of the landlord's lawyer, and the documentary evidence submitted by the landlord. I accept that the landlord intends to occupy the rental unit in good faith, for at least 6 months. I accept that the landlord intends to reside at the rental unit, and have her mother reside with her for periods of time, as per her arrangement with her siblings. The landlord provided affirmed testimony that she was aware of the 12-month rent monetary penalty, pursuant to section 51 of the *Act*, for not using the rental unit for at least 6 months, as per the reason on the 2 Month Notice.

Neither the tenant, nor his lawyer, disputed the authenticity of the landlord's documents during this hearing. I provided the tenant and his lawyer with an opportunity to cross-examine the landlord during this hearing, and they declined to do so. I provided the tenant and his lawyer with an opportunity to call witnesses at this hearing, and they declined to do so.

I find that the tenant was unable to provide sufficient evidence to dispute the landlord's 2 Month Notice and to support his assertion that the landlord does not intend, in good faith, to occupy the rental unit.

I find that the tenant failed to provide sufficient evidence of the following: that the landlord's intention is to re-rent the unit for higher rent without 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, to suggest that the landlord is not acting in good faith. This is as per Residential Tenancy Policy Guideline 2A above.

The tenant did not indicate that there were any other notices to end tenancy, issued by the landlord, or any other RTB hearings, regarding tenancy disputes, involving the landlord, the tenant, or any other tenants.

I find that the tenant's assertion that the landlord intends to re-rent the entire property to new tenants at a higher rent amount, is merely speculation and conjecture. The tenant failed to provide sufficient documentary and testimonial evidence of same. The tenant did not reference any letters, notices, text messages, emails, witnesses, or other such information, for this hearing, indicating that the landlord increased his rent, intended to increase his rent, or wanted to re-rent the rental unit or any part of the property to new tenants to obtain a higher rent.

In fact, the tenant's lawyer indicated that the tenant's monthly rent has not been increased since September 1, 2015, when he first moved into the rental unit, and it currently remains at the same amount of \$3,100.00. This is despite the fact that the landlord purchased the rental unit in 2021, and she is legally entitled to increase the tenant's rent, by the RTB *Residential Tenancy Regulation* allowable amount, every 12 months, as per the *Act*, and she has not done so for the years 2022 or 2023, when she was permitted by the RTB to do so. I find that this demonstrates that the landlord is not seeking a financial profit, to increase the tenant's rent, or to re-rent the unit for a higher amount to new tenants.

I find that the tenant failed to provide sufficient evidence that the landlord owns other properties, where the landlord can reside. I find that the tenant failed to provide sufficient evidence that the landlord can occupy comparable vacant rental units in the property. I find that the landlord has already occupied the basement, with her mother, at the same property, but this has not met her or her mother's needs.

I find that the landlord occupied the basement first, before serving a 2 Month Notice to the tenant. I find that the landlord renovated the basement unit for her own use, and when this area was not appropriate for her or her mother to occupy, she served a 2 Month Notice to the tenant in order to occupy the rental unit in the upper suite.

Therefore, I find that the landlord is not intending to obtain a financial profit and this does not question the landlord's good faith intention.

The landlord provided a medical note from her doctor, recommending that the landlord move from the basement suite to the ground floor rental unit, due to her cough and health issues. Neither the tenant, nor his lawyer, disputed the authenticity of this note. Neither the tenant, nor his lawyer, requested a summons prior to or during this hearing, to cross-examine the doctor who wrote the note. Neither the tenant, nor his lawyer, called any doctors or medical experts in response to this note. The tenant's lawyer offered his own explanation, when he is not a doctor or a medical expert, that the landlord's cough could be due to her own smoking, which I do not find to be reliable.

The tenant identified roommate issues and disputes with the landlord, regarding same. The majority of the tenant's lawyer's submissions at this hearing, were related to roommate occupancy and the requirement under the parties' tenancy agreement and Residential Tenancy Policy Guideline 13. During this hearing, the landlord asserted that this was irrelevant, and the tenant and his lawyer failed to respond to same. I find that this does not question the landlord's good faith intention. The tenant continues to occupy the rental unit, despite the above issues. The tenant also testified, during this hearing, that he did not want to vacate the rental unit, despite the above issues. The tenant failed to identify any previous RTB applications that he filed against the landlord, regarding the above issues. I find that the landlord was agreeable to the tenant having roommates at the rental unit, provided that she could be involved in the screening process, which the tenant agreed to, and did not dispute during this hearing.

I find that the landlord did not waive her right to enforce the 2 Month Notice, by accepting rent from the tenant after the effective date of the notice. The landlord did not withdraw or cancel the notice prior to or during this hearing, or tell the tenant that it was withdrawn or cancelled. The landlord attended this hearing with her lawyer and continued to pursue an order of possession against the tenant, at this hearing. The landlord is entitled, pursuant to section 26 of the *Act*, to receive rent from the tenant, while he is still occupying the rental unit. I find that the landlord accepted the rent from the tenant based on use and occupancy only, and it did not reinstate this tenancy.

Neither the tenant, nor his lawyer, indicated that the tenant believed or was told by the landlord that his tenancy was reinstated or that the 2 Month Notice was cancelled. The tenant did not cancel this hearing or withdraw his application. The tenant appeared at this hearing with his lawyer to pursue a dispute of the 2 Month Notice.

Based on a balance of probabilities and for the above reasons, I find that the landlord intends to occupy the rental unit in good faith for at least 6 months. I find that the landlord qualifies as a landlord and owner 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 tenant's 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 tenant. I find that the landlord's 2 Month Notice, dated October 24, 2022, complies with section 52 of the *Act*. The effective date on the 2 Month Notice of December 31, 2022, has long passed, since it is now March 23, 2023, on the date of this hearing.

Throughout this hearing, I repeatedly informed the tenant that I could issue a two (2) day order of possession against him, if I upheld the landlord's 2 Month Notice and ended this tenancy. The tenant repeatedly affirmed his understanding of same.

Conclusion

The tenant's 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. The tenant must be served with this order. Should the tenant 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: March 23, 2023

Residential Tenancy Branch