



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL RP OLC FFT**

Introduction

This hearing was convened telephone conference as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an order for cancellation of two Two Month Notices for Landlord's Use of Property, both dated January 28, 2022 (collectively the "2 Month Notices") pursuant to section 49;
- an order for the Landlords to complete repairs to the rental unit pursuant to section 32;
- an order for the Landlords to comply with the Act, *Residential Tenancy Regulation* ("Regulation") and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application from the Landlords pursuant to section 72.

The original hearing of the Application was held on March 16, 2023 ("Original Hearing"). The Landlords' legal counsel ("RD"), the Tenant and the Tenant's advocate ("SW") attended this hearing. Neither of the two Landlords attended the Original Hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Original Hearing was scheduled for one hour and there was insufficient time to take all the parties' testimony and allow rebuttals within that time frame. Pursuant to Rule 7.8 of the RoP, I adjourned the hearing and issued an interim decision dated March 16, 2023 ("Interim Decision"). The Interim Decision stated the Landlords and Tenant were not permitted to serve each other with, or submit to the Residential Tenancy Branch ("RTB"), any additional evidence. The Interim Decision and Notices of Dispute Resolution for the

adjourned hearing, scheduled for March 31, 2023 (“Adjourned Hearing”), were served on the parties by the RTB. One of the two Landlords (“PE”), RD, SW and the Tenant attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, the Tenant stated she served the Notice of Dispute Resolution Proceeding (“NDRP”) on the Landlords by registered mail on February 10, 2023. The Tenant submitted into evidence a Canada Post receipt with the tracking number for service of the NDRP by registered mail to corroborate her testimony. Although Rule 3.1 of the RoP requires an applicant to serve each respondent with copies of the Notice of Dispute Resolution Proceeding, RD acknowledged the Landlords received the NDRP from the Tenant. I find the NDRP was sufficiently served on the Landlords in accordance with the provisions of section 71(2)(b) of the Act.

At the Original Hearing, the Tenant stated she served her evidence on the Landlords by Priority Post on March 1, 2023. RD acknowledged the Landlords received the Tenant’s evidence. I find the Tenant’s evidence was served on the Landlords in accordance with the provisions of section 88 of the Act.

At the Original Hearing, RD stated the Landlords served their evidence on the Tenant’s door on March 6, 2023. The Tenant acknowledged she received the Landlords’ evidence on March 7, 2023. I find the Landlords’ evidence was served on the Tenant in accordance with the provisions of section 88 of the Act.

Preliminary Matter at Original Hearing – Severance and Dismissal of Tenant’s Claims

The Application included claims for (i) an order for the Landlords to complete repairs to the rental unit; and (ii) an order for the Landlords to comply with the Act, Regulations and/or tenancy agreement (collectively the “Tenant’s Other Claims”).

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

At the Original Hearing, I explained that, where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that

are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner. I find the primary issues before me are whether the Two Month Notices to End Tenancy should be cancelled and whether the Tenant is entitled to recover the filing fee for the Application. If I cancel the Two Month Notices to End Tenancy, I will dismiss, with leave to reapply, the Tenant's Other Claims. If I grant the Landlords an Order of Possession, then I will dismiss, without leave to reapply, the Tenant's Other Claims.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 2 Month Notices?
- If the Tenant is not entitled to cancellation of the 2 Month Notices, are the Landlords entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted into evidence a copy of a signed tenancy agreement dated September 24, 2017. The tenancy agreement stated the tenancy commenced on October 1, 2017, with a fixed term of 15 months, with rent of \$2,992.00 from October 1, 2017 to December 31, 2017, \$3,200.00 from January 1, 2018 to March 31, 2018 and \$3,000.00 from April 1, 2018 to December 31, 2018. The tenancy agreement stated the rent included 40% of electricity, natural gas, rubbish removal and water. The tenancy agreement stated a final accounting for the utilities would be made at the end of the fixed term or at the date of early termination of the lease, upon receipt of the utilities covering the tenancy. The parties agreed the current rent is \$3,075.00 per month. The Tenant stated she believed she paid a security deposit of \$1,537.50 when she signed the original tenancy agreement in 2007. RD stated the Tenant does not owe the Landlords for any rental arrears. Based on the foregoing, I find there was a tenancy between the Landlords and the Tenant and that I have jurisdiction to hear the Application.

The Tenant submitted into evidence a copy of the first 2 Month Notice ("First 2 Month Notice") that stated the date for move out was April 1, 2023. The First 2 Month Notice stated the reason for ending the tenancy was that the landlord or the landlord's spouse

would occupy the rental unit. The Tenant stated she received another 2 Month Notice ("Second 2 Month Notice") that stated the date for move out was April 1, 2023. The Second 2 Month Notice stated the reasons for ending the tenancy was that a child of the landlord or landlord's spouse would occupy the rental unit.

RD stated the First 2 Month Notice was served on the Tenant's door on January 28, 2023. RD stated the Second 2 Month Notice was served on the Tenant's door on March 3, 2023. The Tenant acknowledged she received the First and Second 1 Month Notices on the dates stated by RD.

RD stated the First 2 Month Notice was prepared by the Landlords. RD stated the Landlords retained her as legal counsel and it was at that time it was noted that there was a "clerical error" made on the First 2 Month Notice when it incorrectly stated the landlord or landlord's spouse would be occupying the rental unit rather than the Landlords' child. RD stated the Second 2 Month Notice was prepared and served on the Tenant. RD stated the child referred to in the Second 2 Month Notice is the adult son ("BE") of the Landlords. RD stated BE is currently living with a friend. RD stated there were informal discussions between the Landlords and Tenant about BE moving into the rental unit. RD submitted into evidence a copy of a signed tenancy agreement between the Landlords and BE to corroborate the Landlords' intent that BE would be occupying the rental unit. RD stated the Landlords were acting in good faith when they served the First and Second 2 Month Notices on the Tenant.

When I asked, RD stated the Landlords did not obtain the consent of the Tenant to cancel or withdraw the First 2 Month Notice. The Tenant confirmed she did not give consent to the Landlords to withdraw or cancel the First 1 Month Notice. The Tenant stated she had conversations with PE, starting on on December 28 and 30, 2022 about the amount of rent she was paying to the Landlords and how PE felt it was far below market rent. The Tenant submitted into evidence three audio recordings she made of the phone calls with PE on December 28, 2022, December 30, 2022 and January 25, 2023, together with transcripts she made of the three recordings.

Part way through the December 28, 2022 phone conversation, PE and the Tenant stated:

PE: Okay, well, look, let's, let's do this. Ponder. Ponder and, you know, if you want to stay there, [name of Tenant]? If you if you're like you're having a kid in, let's go to the years here. Okay. You're having a kid in May, right? And you want to stay there while the kids a year old? Okay, that's fine. I'm totally cool with that. But, but not, but not at 3075. That just doesn't [expletive] work. So, you know, if you have to get two roommates paying you X dollars to cover and keep your deal the same. I get that. That's totally cool. I'm okay. But you know, I You gotta look at it and go Well, [expletive], you know, if my kids got to pay this, then [expletive], I'm just moving them in there. You know, I mean, so, so I'm, you know, even if you said okay, 30 whatever it was, I don't know, [expletive] for three grand. But I mean, even if you said three grand in 2019. And then you said

Yeah, I mean, even if you did a like minimal [expletive] rent increase over the last few years, it puts you up at like, you know, kind of 3400 or 3500 a month, right? I mean, what's the market? What's the market rent for your suite? The market rent for your suite? Probably. If I didn't touch it knew [expletive] all to it. The market rent for your suite right now is probably 3800 a month. Easy peasy. Right? Easy. Like I could rent it in a weekend for 3800 a month. So, you know, I mean, I'm not saying [name of Tenant] pay me 3800 a month. But what I am saying is, if you want the security of being there for the next 18 months, then we got to come to an arrangement. Otherwise, I gotta look after my own kid. Right. And he's out there stomping around trying to find a place and he's like, Holy [expletive].

Tenant: Yeah, I hear I know, he's going through. Going through. We're all going through. It's crazy. Well, I'll I mean, yeah, I'll definitely I'll take it away and come back to you with some options. And maybe Likewise, you can do the same and Oh, yeah. What about what about what about? What about him for your other suites as well? Or your friends? Yeah. Have you thought about?

PE: Yeah. I mean, I haven't even talked to him about that. Right. I didn't even talk to him about that. So. But he did say to me, he said, Hey, you know, you know, he likes that house. He really does like that house. And so, you know, he went through the suite upstairs and he was like, Holy [expletive], you know, like, wow.

So, so that's the thing. I mean, I, my preference would be to come to an arrangement with you where you can stay and be happy if that's what you want. You know?

Later in the conversation PE stated:

PE: So, so here's the thing. Yeah, I mean, obviously, where it is now doesn't make any sense for me. Because just just my basic costs have just escalated dramatically, right? I mean, bottom line, right. So, you know, I'm, I'm okay with saying, It's okay, look, we can, we can do some graduated thing. I'm okay with that. Okay. And if you say, hey, look, I want the security of knowing I can be here till my child is one. That's cool. I get that. I'm okay with that. So we just need to, we just need to agree on some numbers. Okay. So, you think about it. You give it some thought. And where are we here? What's the date?

Part way through the December 30, 2022 phone conversation, PE and the Tenant stated:

PE: Gotcha.
So yeah. So basically. Yeah, during COVID. I mean, the last increase that I gave you, which we had a dispute about because I gave you the - I think it was two and a half or 4% - I can't remember what it was. (Yeah). And which I gave the three months prior to the first of the year. And then they said that year, there would be no increases beyond a certain amount. But my, the increase I gave....

Tenant:
Yeah, that's the COVID one, just because it came in late. But if you had done it earlier, you could have increased it. So that's what I was putting in there.

PE: Sure. Yeah.

So yeah. And I'll be honest with you, [name of Tenant]. Yeah, I didn't get into it with you. But I, that was very, very disturbing to me, that you did that. And I was extremely angry about it. OK. I didn't bother getting into it with you. Because it's like, yeah, I'm not going to just wasting my time. But that was really, I think, poor judgement on your part to try and chinz me like that. I was pissed off about it. But anyway, here's the bottom line [name of Tenant], K? Here's the bottom line, okay. I'm going to give it to you straight up so we're not spending all night on the phone. If you want to stay there, you can stay there. But, the rent's got to be \$3600 plus utilities, or my son's moving in - just that simple. Okay. So it's 3600 plus utilities and you can, if you want to stay there, that's fine. I'll put - I'll put them into one of those other places. But if not, then they're moving in there.

Tenant: We talked about graduated increase with just some - at least some notice in time. So that's why I was sending you the that's what I was kind of offering the January moving it up to what it would be March the what it would be in 2023. And then going, you know, discussing a timeline for those additional increases to get up to where that you want. That's why I left it open at the end. But you know, just so it's not dropping on me right this second because that would be - you know,

PE: yeah. Okay, so I'm not opposed to doing something like that. I'm not opposed to doing something like that, uh,Take? 28? Yeah. Okay. You give it some thought. Let's plan to chat again on I don't care. I'm open to Friday, tomorrow, whatever. Okay. But think about it. And then let's, let's figure something out. By latest noon on Friday, let's just say noon Friday. Okay. And then. And then. But if you're wanting to discuss and chat about then probably we need to talk again tomorrow, right? So

Later during this conversation PE stated:

PE: So you know. Yeah. So, you know, if, if, if you want to do 3600 a month plus your portion of the utilities, no problem. I'm good for that. I could rent that tomorrow. I could put an ad in for 3800 Plus utilities, I would rent it in 24 hours be gondo, okay. I know that. It's three bed, two bath. I don't care how rough it is. It's got a big deck, it's got a sunny backyard. It's got lots going on. And, and the house is Rockstar, you know, everybody loves that house, including me. So you know. Yeah, that's,

that's where I am. I talked about it with [name of other Landlord] and I talked about it with my son and his wife. So, you know, I get where you're at. And I empathise with that, you know, I really do. And that's why we're better off to have this conversation and get this ironed out before tomorrow. Because, you know, the option is you get 60 days, you get your legal notice, which is 60 days, I wouldn't do that to you. You know, I would give me more than 60 days, but then you got to go find a new place. And, and that's yeah. It is what it is.

Part way through the January 28, 2023 phone conversation, PE and the Tenant stated:

Tenant: Yeah. Right now, in February. Yeah. Right.

PE: Starting February 1, right. So, you can't expect us to subsidise your lifestyle. Right. Like you've been living there under a very good arrangement and having roommates. And, essentially, your housing has been costing you very, very little for a long time. Right. Since you've since you've been taking roommates, which is a long time, right. So, and I've always been cool with it. You know, I'm okay with that. Right. But the reality is that the cost of everything is gone up a lot. So, so I can't subsidise your lifestyle anymore. Okay. And it's unfair to us. And it's just not realistic. So, you know, you can look anywhere you go to live [name of Tenant, your out of pocket cost, you're not going to find anything for less than \$2500 a month. Nothing to live with you and the child. Zero for anything less than \$2500 a month, right? I mean, you've been looking, you know, I mean, you're very aware of what's going on. Okay. So you know, what I presented to you was something I thought was extremely fair. Okay, I thought it was extremely fair. Well, I know, it's fair. And I think you also know it's fair. Right? So. And I still think that. So, like I said, if you want to stay? That's cool. You know, we're, we're happy to have you there. Right. But again, it's got to be fair to us. And right now, it's not, so I know what the rules are. But at the end of the day, like I said, if it's not doesn't make sense for us, then you're gonna have to go find somewhere to live. It's just that simple [name of Tenant]. If it doesn't make sense to us, you've got to go find somewhere to live. What I proposed to you last time, I know that's more than fair. So, you know, if you're wanting to make that change, we can do that. Because, you know, Jaina and I have talked about it, and we feel that that's more

than fair. So, you know, if you decide down the road that you want to move on, well, that's your prerogative. You mean, you know, you're, you're free to do whatever you want. But the reality is, we're just looking, you know, for something that's fair, because, you know, based on the cost of everything, right. Your heat and light is included in that in that amount. And, you know, it's just unrealistic, right? It does. So, yeah. So, if you're wanting to do that, then we can carry on, and if not, then then you know, we can't

The Tenant submitted into evidence an email dated January 28, 2023 to PE in which she made a proposal that she could add a 2% rent increase retroactive as of January 1, 2023 and that she would be willing to pay an extra \$25.00 per month until a maximum of \$3,400.00 per month was reached in 2023.

RD stated PE did not dispute the accuracy of the transcripts made by the Tenant of the phone conversations between the Tenant and PE on December 28 and December 30, 2022 and January 28, 2023.

Analysis

Sections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1)(a) In this section:

[...]

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and

[...]

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,

- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

- (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.*
- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (8) A tenant may dispute
 - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
 - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

[emphasis in italics added]

The Landlord stated the First 2 Month Notice was served on the Tenant's door on January 28, 2023. Pursuant to section 90 of the Act, the Tenant was deemed to have received the First 2 Month Notice on January 31, 2023, being 3 days after it was posted on the Tenant's door. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or until February 15, 2023. The records of

the RTB disclose the Tenant filed the Application to dispute the 2 Month Notice on February 7, 2023. As such, I find the Tenant made her application to dispute the 2 First Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act. I find that, when the Tenant dispute the First 2 Month Notice, she was deemed to have disputed all subsequent Two Month Notices to End Tenancy that bore an effective date prior to the effective date of the First 2 Month Notice.

The First 2 Month Notice, dated January 28, 2023, stated the Landlord or their spouse would be occupying the rental unit and stated the effective date for move-out was April 1, 2023. The Second 2 Month Notice, also dated January 28, 2023, stated a child of the Landlord or landlord's spouse would be occupying the dated rent and also stated the effective date for move-out was April 1, 2023. The First 2 Month Notice was served on the Tenant's door on January 28, 2023 and the Second 2 Month Notice was served on the Tenant's door on March 3, 2023. As such, the Second 2 Month Notice was served before the effective date of the First 2 Month Notice. The Tenant stated she did not consent to the withdrawal or cancellation of the First 2 Month Notice.

Residential Tenancy Policy Guideline 11 ("PG 11") addresses amendment, withdrawal and waiver of a notice to end tenancy. PG 11 states in part:

C. WITHDRAWAL OF NOTICE TO END TENANCY

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below).

It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

The Tenant did not consent to the withdrawal of the First 2 Month Notice. As such, I find, based on PG 11, that the Landlords were not permitted to serve the Tenant with

another Two Month Notice to End Tenancy before April 1, 2023. RD stated it was a clerical error when the First 2 Month Notice stated the Landlord would be occupying the rental unit which was corrected on the Second 2 Month Notice to state a child of the Landlords would be occupying the rental unit. However, I find this was a substantive error. Although the Second 2 Month Notice bore the same date as the First 2 Month Notice, I find that giving the Tenant the Second 2 Month Notice with the same date as the First 2 Month Notice was an attempt by the Landlords to unilaterally withdraw the First 2 Month Notice without the Tenant's consent. As such, I find the Second 2 Month Notice was not effective when it was served on the Tenant. I also find it would be contrary to the remedial objectives of the Act and the protections intended to be afforded to tenants by the Act if a landlord could serve an amended Two Month Notice to End Tenancy before the effective date of the original Two Month Notice without firstly obtaining the consent of the Tenant.

I also find the First and Second 2 Month Notices were not effective when given to the Tenant. *Residential Tenancy Policy Guideline# 2A* ("PG 2A") addresses the requirements for ending a tenancy for Landlord's use of property. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. PG 2A explains the concept of good faith as follows:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

"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."

It is clear from the conversations between PE and the Tenant on December 28 and 30, 2022 and January 28, 2023, that the Landlords were seeking additional rent from the Tenant. In his conversation with the Tenant on December 28, 2022, PE told the Tenant

the market rent was \$3,800.00 and that they had to come to some arrangement. In the conversation on December 30, 2022, PE told the Tenant the rent has "got to be \$3600 plus utilities, or my son's moving in - just that simple. Okay. So it's 3600 plus utilities and you can, if you want to stay there, that's fine.". In the conversation on January 25, 2023, PE told the Tenant that she could not expect the Landlords to subsidize her lifestyle.

Section 41 of the Act states a landlord must not increase rent except in accordance with Part 3. The protections afforded to tenants by Part 3 of the Act are an integral part of the remedial provisions of the Act. If a landlord were permitted use the threat of serving a tenant with a Two Month Notice to End Tenancy pursuant to section 49 of the Act to extract a rent increase from a tenant, the provisions of Part 3 of the Act would be meaningless where the tenancy is on a month-to-month basis or is reaching the end of the fixed term.

There may have been an honest intention on the part of the Landlord for BE occupy the rental unit pursuant to the terms of the rental unit between the Landlords and BE. However, the evidence before me persuades me that the Landlord had a dishonest motive when he served the 2 Month Notice on the Tenant. Based on what PE told the Tenant during the conversations on December 28 and 30, 2022 and January 25, 2023, I find it was patently clear that the Landlord served the Tenant with the 2 Month Notices because he was unable to negotiate an agreement with the Tenant for increased rent within the time frame that satisfied him. As such, I find the Landlord was not acting in good faith when either of the 2 Month Notices were served on the Tenant. Based on the foregoing, I order the 2 Month Notices to be cancelled. The tenancy continues until it is lawfully ended in accordance with the provisions of the Act.

As the Tenant has been successful in the Application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next months' rent, notifying the Landlords when this deduction is made. The Landlords may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

As the 2 Month Notices have been cancelled, the Tenant's Other Claims are dismissed with leave to reapply. As such, the Tenant has the option of making a new application for dispute resolution to make the Tenant's Other Claims.

Conclusion

The 2 Month Notices are cancelled. The tenancy will continue until it is lawfully ended in accordance with the Act.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee for the Application.

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: April 21, 2023

Residential Tenancy Branch