



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 1377508 BC LTD- DBA ARSH GILL TRUCKING
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNL, MNDC, OLC, FF
For the landlord: OPL, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for:

- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued by the landlord;
- compensation for a monetary loss or other money owed;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the cost of the filing fee.

The landlord applied for:

- an order of possession of the rental unit pursuant to the 2 Month Notice served to the tenant; and
- recovery of the cost of the filing fee.

The landlord and their agent were present for the start of the hearing, and were affirmed. Initial testimony was taken. Nine minutes after the start of the hearing, the tenants called in, were affirmed, and the hearing continued.

The parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. No parties raised an issue with regard to service of the other's evidence or application.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states that 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.

I find the tenants' monetary claim and for an order requiring the landlord to comply with the Act are unrelated to the primary issue of determining the merits of the 2 Month Notice. Those unrelated claims are dismissed, with leave to reapply. Leave to reapply does not extend any applicable time limitation periods.

Issue(s) to be Decided

Should the 2 Month Notice be upheld or cancelled?
Is either party entitled to recovery of the cost of the filing fee?

Background and Evidence

The tenant, RF, said they moved into the rental unit in August 2009, and monthly rent is \$1,200. The landlord submitted that monthly rent is \$1,500. The tenant said that the other listed tenant, JAP, lives in a manufactured home on the same property, as a separate tenant, that they collect \$300 from JAP every month, and pay the landlord a total of \$1,500.

The rental unit was described as a 2 bedroom, 1 bathroom home.

The landlord submitted that they believe JAP is a sub-tenant of the tenant and they know nothing about JAP as a separate tenant.

The landlord said they purchased the property in September 2022, which was described by the agent as on a large acreage.

In the two applications, two different 2 Month Notices were filed in evidence. The tenant's application related to a Notice dated February 4, 2023, for an effective move-out date of May 1, 2023. In their application, the tenant submitted they received the Notice by personal service on February 4, 2023.

In the landlord's application, the 2 Month Notice was dated October 23, 2022, for an effective move-out date of December 1, 2022. The signed proof of service filed by the landlord showed the October 2 Month Notice was served to the tenant on February 16, 2023. The tenant denied receiving this Notice.

The agent confirmed that the two Notices were for the same reason, indicating that either Notice could be considered.

The hearing proceeded on the 2 Month Notice of February 4, 2023, as I find insufficient evidence that the February, 2 Month Notice was properly served, and due to the fact it was redundant to the October, 2 Month Notice.

Pursuant to Rule 6.6 and 7.18, the landlord proceeded first in the hearing to support the Notice.

The reason listed on the 2 Month Notice for ending the tenancy was that the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The agent submitted that the landlord is a large trucking company, with the large acreage being located close to a major highway. The agent said that the property will be used to park the large trucks and the rental unit will be used for the trucking business operations. For instance, there will be an office for the trucking business taking one of

the bedrooms and other areas, and if an employee needs to spend the night, they can use the other bedroom. The employees can also make coffee in the kitchen.

In response, the tenant said that they believe the landlord will bulldoze the rental unit, and pointed out that the landlord here has never been to the property.

JAP denied they were a tenant of RF and that they have always been a separate tenant of the original landlord.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 49 (4) of the Act applies and states a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Tenancy Policy Guideline 2A explains that the intent to occupy means that the rental unit must be used by the person owning the voting shares, or their close family member as a living accommodation or as part of their living space.

In this case, the landlord confirmed that the rental unit would be used for the company's trucking business and a base of operations.

As the intended use was for a business use, not a residential use, I find the landlord submitted insufficient evidence to support the reason on the 2 Month Notice. As a result, I **ORDER** the 2 Month Notice dated February 4, 2023, is cancelled and is of no force or effect.

I **ORDER** the tenancy to continue until it may legally end under the Act.

I also **order** the 2 Month Notice of October 23, 2022, filed in the landlord's application, is cancelled, as I find there was insufficient evidence that it was served to the tenant and as the landlord agreed to proceed on the 2 Month Notice filed in evidence by the tenant in their application.

For the above reasons, I grant the tenant's application and award the tenant the recovery of the \$100 filing fee. I **authorize** the tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenant should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

As I have cancelled the two, 2 Month Notices, I **dismiss** the landlord's application for an order of possession, without leave to reapply.

Conclusion

The tenant's application is fully successful.

The two, 2 Month Notices issued by the landlord are cancelled. The tenancy continues until it may otherwise legally end under the Act.

The two unrelated claims of the tenant are dismissed, with leave to reapply.

The landlord's application is dismissed, without leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 26, 2023

Residential Tenancy Branch