



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, CNL, OLC, FF

Introduction

This hearing convened to deal with the tenant's application and amended application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant originally applied for an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the cost of the filing fee.

The tenant amended their application seeking an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) issued by the landlord.

The tenant, the landlord and their partner attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter 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. The parties confirmed receipt of the other's evidence.

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.

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

Issue(s) to be Decided

Should the 1 Month Notice be cancelled or upheld?

Should the 2 Month Notice be cancelled or upheld?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulations, or tenancy agreement?

Is the tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

The tenant submitted they moved into the rental unit in July 2021 and monthly rent was \$600. The tenant did not pay a security deposit. The rental unit is located on the main level, described as a walk-out basement. The landlord lives in the upper level. The tenant submitted their rental unit is a one bedroom suite. The tenant said the landlord has 5 bedrooms in total, with the upper level having 3 bedrooms, and 1 bedroom by the stairs going to the upper level, and another room which could be a bedroom adjacent to the laundry as part of the landlord's living space. The landlord denied that there was a separate bedroom on the lower level, as one room was an office and the other room was for storage.

1 Month Notice –

Filed in evidence was the 1 Month Notice. The Notice was dated November 30, 2022, for an effective move-out date of December 31, 2022. The tenant confirmed receipt of the Notice on November 30, 2022 when it was delivered in person.

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

The reason listed on the Notice to end tenancy was:

- Tenant is repeatedly late paying rent.

In the Details of Cause(s) portion of the Notice, the landlord listed rent payments on June 15, July 6, August 2, September 6, and October 3, 2022.

In support of the 1 Month Notice, the landlord said that there is no written tenancy agreement, that they believes the tenant knew the monthly rent was due on the first day

of the month, as shown by the text message communication between the parties. The landlord said the reason there was no written tenancy agreement was the parties were friends and the arrangement began informally, when the tenant agreed to look after the property for a low rent while the landlord was away up north teaching for a year.

In response, the tenant provided a written statement, which summarized their testimony, as follows:

Reasons I am disputing the "late rent payment" notice:

1. The landlord never established any formal date for the payment of rent. Instead she verbally approved of rent being paid after the first.

- A written lease agreement was never provided. I have not seen any documents stating that rent was due to be paid on the first. (excluding the eviction form.)
- Paying after the first of the month, and being reminded if [] wanted payment before then, was a well-established and accepted pattern. It began when I rented a room from her when she lived in a different house, persisted for the duration, and continued into the new tenancy at Hoffman. (this is a combined duration of about 39 months.)
- At no point during the tenancy (excluding the eviction form) has the landlord used the term "Late rent" or "late payment." If the landlord did indeed expect or want rent paid on a consistent date, then to my knowledge she made no attempt to set or clarify expectations.

2. *Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent* states that:

- "A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision."
- The landlord did not respond after the most recent "late payment" of rent which according to the eviction notice was October 2, 2022. Instead the notice came almost two full months later on November 30th. Rent for November was paid on the 1st, the due date stated in the eviction.

3. Not only was the eviction not served after the most recent "late payment," the eviction instead was served ~24 hours after a conversation with my landlord where I explained that I would not agree to leave just because she asked. I told her she'd need to do it legally and give me an actual eviction form.

-I had previously been told that the reasons [] needed me to leave on February 1st were strictly financial. In the conversation we had on August 9th, (**Evidence file: August 9th convo Part 1. Time stamp: 11:09**)

-During our convo on November 29th [] shared her motivation for evicting me was because the amount I am paying is "under market value" (**Evidence File: Nov29ConvoRecording. Timestamp 10:10**) Her comment about market value was consistent with all previous explanations, the mention of "yard and stuff" was new but unsubstantial.

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant filed copies of recordings and text messages.

2 Month Notice -

Filed in evidence was the 2 Month Notice. The Notice was dated December 27, 2022, for an effective move-out date of February 28, 2023. The tenant confirmed receipt of the Notice on November 27, 2022 when it was attached to the door. The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the landlord or landlord's spouse.

The landlord further described the home as a free-standing home, with 2 floors. The tenant lives in the lower, self-contained walk-out unit, with one-bedroom and kitchen. The landlord lives in the upper unit, which has 3 bedrooms.

The landlord said they and their partner were trying to have a baby and they were excited to start and grow their family. For this reason, they want a nursery, and the downstairs will be a spare room for their mother when they comes to visit to help take care of the baby, and for a rec room.

The landlord filed copies of letters from their counsellor, physicians, a family friend, and the landlord's mother.

Tenant's response –

The tenant submitted that the landlord served this Notice to end the tenancy right after receiving the tenant's application to dispute the 1 Month Notice. The tenant said that the landlord has 5 bedrooms in total and does not need the bedroom in the rental unit.

The tenant submitted that the landlord now provided a second use for the rental unit in the hearing, for the landlord's mother to use. The tenant submitted further that the recordings show that the landlord wants more rent.

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.

1 Month Notice –

Upon review of the 1 Month Notice, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 88 of the Act when it was served by personal service.

Section 47(1)(b) of the Act authorizes a landlord to end a tenancy if the tenant is repeatedly late in paying rent.

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

Further, a landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In this case, the undisputed evidence is that there is no written tenancy agreement for this tenancy. I also find the evidence shows that the tenant submitted sufficient evidence to show that the tenancy terms were somewhat informal and unclear as to when the payments were expected to be made, only that the tenant owed \$600 each month.

For this reason, I cannot find that the tenant has breached section 26 of the Act as I find there was never a required due date for the monthly rent.

For this reason, I find the landlord submitted insufficient evidence to support the cause listed on the 1 Month Notice. As a result, I **ORDER** the 1 Month Notice dated November 30, 2022, is **cancelled** and is of no force or effect.

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

2 Month Notice –

Upon review of the 2 Month Notice, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 88 of the Act when it was served by attaching it to the tenant's door.

Section 49 (3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or spouse intends in good faith to occupy the rental unit.

Tenancy Policy Guideline 2A (PG 2A) states that a landlord may end the tenancy if they or their close family member, spouse in this case, *"intend in good faith to use the rental unit as a living accommodation or as part of their living space"*.

PG 2A further provides that 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 their obligations under the Act.

PG 2A addresses good faith 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.

...

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.

Upon a review of the relevant evidence, I find the landlord submitted insufficient evidence that they truly intend on using the rental unit as living accommodation for 6 months. I make this finding based on the following.

The landlord said that they wanted to grow their family and when that happens, they want to use the rental unit for their mother to stay when they visits. This reason, if true, is for a future event, which I find means that the landlord would not have an honest intention to occupy the rental unit for a living accommodation for 6 months after February 28, 2023.

I placed little weight on the landlord's letters of support from their health care professionals, their mother, or friend. When I review the letters, I find the content does not show first hand knowledge of the matters, but shows a consistent pattern of information given to them by the landlord. The letter writers were not present at the hearing to provide first hand testimony or to be cross-examined.

Apart from that, the landlord said that the rental unit will also be used for their mother when they come to visit, which I find is not occupying the rental unit for occupational purposes for 6 months after the effective date of the 2 Month Notice. However, that was not the reason listed on the Notice and another purpose may not be substituted.

When considering whether the landlord issued the 2 Month Notice in good faith, I find the tenant's evidence, including the text messages and recordings, lead me to conclude the landlord did not issue the Notice in good faith and had an ulterior motive when doing so, which was to significantly increase the monthly rent equal to current market conditions.

Given the evidence before me and taken in totality, I find that the landlord submitted insufficient evidence to prove on a balance of probabilities that the landlord or spouse intended on living in the rental unit for residential purposes for 6 months following the effective date. I also find that the 2 Month Notice was not issued in good faith, but rather I find the landlord had an ulterior motive.

For these reasons, I find the landlord submitted insufficient evidence to support 2 Month Notice. As a result, I **ORDER** the 2 Month Notice dated December 27, 2022, is cancelled and is of no force or effect.

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

Request for compliance with the Act and regulations -

Section 62(3) of the Act grants me authority to make any order necessary to give effect to the rights and obligations of the parties under the Act.

The Act defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In this case, the landlord did not provide a written tenancy agreement containing the standard terms mentioned in section 13 of the Act. Therefore, I find it necessary to issue orders in these matters.

I order that the monthly rent for this tenancy remains at \$600. I also order that the monthly rent is due and payable in full on the first day of each month, beginning with May 2023. As no security deposit was required as a condition of entering into the tenancy agreement, I order that one is not now required. I order that the tenancy is on a month-to-month basis.

For the above reasons, I grant the tenant’s application, including the request for 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.

Conclusion

The tenant’s application is fully successful.

The 1 Month Notice and the 2 Month Notice issued by the landlord have been cancelled. The tenancy continues until it may otherwise legally end under the Act

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 24, 2023

Residential Tenancy Branch