



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with a tenant's application to cancel a Two Month Notice to End Tenancy for Landlord's use of Property ("Two month Notice").

The hearing was held over two dates and an Interim Decision was issued on December 30, 2022. The Interim Decision should be read in conjunction with this decision.

Both parties appeared and/or were represented at the hearing and the parties were affirmed.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. As seen in the Interim Decision of December 30, 2022, I informed the parties that I would only hear submissions relevant to the Two Month Notice and that the other issues identified on the tenant's Application for Dispute Resolution were severed, with leave to reapply. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

It should be noted that I was provided a considerable number of submissions and evidence, both orally and in the form of documentation, all of which I have considered so long as it is relevant to the matter that is before me. However, with a view to brevity in writing this decision I have only summarized and referenced that which is most relevant and necessary to understand my decision.

Issue(s) to be Decided

Should the Two Month Notice be upheld or cancelled?

Background and Evidence

The tenancy initially started in May 2020. The rent is set at \$2400.00 payable on the first day of every month; however, the rent was reduced by \$200.00 per month, to \$2200.00 per month, pursuant to a previous dispute resolution proceeding.

The subject Two Month Notice was signed by the landlord's legal counsel and sent to the tenants via email on July 29, 2022. The Two Month Notice has a stated effective date of September 30, 2022. When the Two Month Notice was served, the tenant had consented to being served by email. The tenants filed to dispute the Two Month Notice within the time limit.

The Two Month Notice indicates the reason for ending the tenancy is because the landlord or landlord's spouse intends to occupy the rental unit.

Landlord's position

The landlord's legal counsel submitted that the landlord was diagnosed with a medical condition in another country where the landlord currently resides on March 11, 2022. The landlord was admitted to the hospital, surgery was performed on the landlord and the landlord was discharged from the hospital on March 14, 2022. The landlord is a Canadian citizen and seeks to obtain medical services available in this province. The landlord intends, in good faith, to occupy the rental unit as her residence.

The landlord provided a one-page document from the hospital that describes the medical diagnosis, surgical procedure and discharge instructions.

Tenant's position

The tenants are of the position the landlord has not issued the Two Month Notice in good faith.

The tenants point out that in May 2021 they raised an issue of mould in the rental unit to the landlord and after many requests for the landlord to take action the tenants hired their own mould engineer in October 2021. Shortly afterwards, the landlord filed an Application for Dispute Resolution to seek an Order of Possession based on the end of the fixed term tenancy and the tenants file an Application for Dispute Resolution seeking repair orders and monetary compensation, including a rent reduction, for repairs not made.

The Arbitrator presiding over that proceeding dismissed the landlord's request for an Order of Possession and the tenants were awarded monetary compensation, a rent reduction and orders for repairs and mould remediation. Other than the rent reduction which they have been deducting from their rent, the tenants are of the position the landlord has not complied with the Arbitrator's orders.

The tenants are of the position the landlord is trying to avoid making repairs and mould remediation in issuing the Two Month Notice. The tenant testified that at the previous dispute resolution hearing the landlord's agent testified that the residential property is an investment property, the landlord owns multiple properties in the Province and there was no mention the landlord had any intention of moving into the rental unit.

The tenants point to a vacant unit in the residential property that is adjacent to their unit that the landlord could occupy but that she has not. The landlord could also occupy one of the other properties she owns in the Province. However, the landlord has not yet returned to Canada.

The tenants submit that it does not make sense that the landlord want to move to a mouldy rental unit when she claims to be motivated to move to the rental unit due to medical issues. The tenants are also of the position that the medical system here is already strained and not optimal.

The tenants questioned the landlord's need to have such a large living accommodation.

Landlord's response

The landlord's legal counsel responded that the landlord has complied with the orders issued by the previous Arbitrator with the exception of the order for mould remediation and the reason the mould has yet to be remediated is because the tenants are not providing access to the rental unit. The landlord's lawyer also indicated the tenants are trying to dictate which contractors the landlord should use. Despite this challenge, the landlord maintains that these challenges have nothing to do with the landlord's reason for wanting to regain possession of the rental unit.

The landlord's legal counsel submitted the landlord wants to occupy the rental unit and the adjacent vacant unit by joining the two units together and that the tenant's opinion as to how much space the landlord needs or wants should not be considered. I heard

that there is only a locked interior door that separates the rental unit from the vacant adjacent unit.

The landlord's legal counsel explained that the landlord did not issue a Two Month Notice for any of the other properties owned by the landlord because the landlord's other properties are tenanted by long-term tenants.

The landlord's legal counsel argued the tenant's opinion of the medical system should not be considered.

The landlord's agent testified that his aunt, the landlord, had not returned to Canada from living abroad due to Covid restrictions; however, those restrictions were lifted a couple of months ago.

The landlord's agent acknowledged the landlord owns other properties in the Province but that the landlord prefers the rental unit because it is more quiet and serene compared to the landlord's other properties that are located in a more urban setting.

It was acknowledged that at the previous hearing there was no mention of the landlord's intention to move to the rental unit. It was explained that the reason this was not mentioned was because the previous applications were being heard.

Tenant's final response

The tenants denied interfering with the landlord's ability to access the rental unit to make repairs and the tenants would welcome repairs; however, the tenant also stated that the mould remediation must be done in a certain way by qualified contractors and the tenant expressed concern over the landlord's use of a handyman.

The landlord's legal counsel informed me that the landlord has filed another Application for Dispute Resolution seeking an order to compel the tenants to provide them access to the rental unit for purposes of making repairs and mould remediation but that the hearing is scheduled for September 2023. Without making any finding as to the reason repairs or mould remediation have not been made but with a view to assisting the parties understand ways in which a landlord may gain access to a rental unit under the Act, I strongly suggested that going forward the landlord or landlord's agent attach a 24 hour notice of entry to the rental unit door to gain access to the rental unit for purposes of responding to repair issues and mould remediation rather than seeking agreement via email. I further informed the parties that where a proper notice of entry is served in a

manner that complies with section 29 of the Act, the tenants must not interfere with the access or the landlord's ability to complete repairs. Rather, if the tenants have concerns over safety or adequacy of repairs being made the tenants are at liberty to report the matter and seek assistance from the appropriate authority.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

The reason for ending the tenancy, as indicated on the Two Month Notice before me, is consistent with section 49(3) of the Act which permits a landlord to end a tenancy where:

(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

[My emphasis added]

Residential Tenancy Policy Guideline 2A provides information and policy statements with respect to ending a tenancy for landlord's use of property. Under the heading "Good Faith", the policy guideline provides:

B. GOOD FAITH

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 purpose for ending the tenancy**, and they are **not trying to avoid obligations under the RTA** 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 (section 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 demonstrate 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.

[My emphasis added]

In this case, the landlord has put forth that they intend to occupy the rental unit. The tenants called into question the landlord's good faith intention, pointing to the parties' previous dispute where the landlord unsuccessfully tried to end the tenancy and the tenants were successful, and the outstanding repair and/or mould remediation orders.

The tenant had testified that at the previous hearing the landlord's agent submitted the landlord did not have an intention to move into the rental unit and that it was an investment property for the landlord. I see the Arbitrator presiding over the previous dispute recorded the following submissions of the landlord's agent, in part, in the Interim Decision of February 28, 2022:

The landlord's agent submitted that the landlord wants tenancy agreements for fixed terms so that they better manage their expectations around when tenants move in and out of the residential property.

...

The landlord's position is that because the parties have not signed a new tenancy agreement for a new fixed term that no tenancy currently exists, and the tenants should be required to vacate the rental unit. The agent confirmed that

this tenancy is not a sublease and the landlord's currently are not planning to move into the rental unit.

In the Analysis section of the February 28, 2022 Interim Decision, the Arbitrator wrote, in part, with respect to the enforceability of the Mutual Agreement to End Tenancy executed when the most recent tenancy agreement was signed:

In the case before me, I am satisfied that the tenancy agreement is not a sublease and that the landlords do not intend, and furthermore, did not intend at the time of the signing of the latest tenancy agreement, to move into the rental unit at the end of the last fixed term on or after October 31, 2021.

Specifically, I note that the tenancy agreement signed by the parties on April 27, 2021 stipulates that the tenants must vacate the rental unit because they have signed a mutual agreement to end the tenancy.

While I accept that a tenancy may end, pursuant to Section 44 of the Act, I find that by requiring a tenant to sign a Mutual Agreement to End the Tenancy on the same day they sign a tenancy agreement for a fixed term tenancy is a deliberate attempt, on the part of a landlord, to avoid the requirement that they must move into the rental unit at the end of a fixed term if they require the tenant to vacate the unit. As such, I find the landlord was, on a balance of probabilities, aware that they could not require the tenants to vacate the rental unit unless they intended to move into the rental unit.

I also find that the landlords intentionally had the tenants sign the mutual agreement to end the tenancy at the end of the fixed term with the sole purpose of attempting to either avoid or contract out of the Act and force the tenants to move out at the end of the fixed term contrary to the requirements set forth in the Regulation.

As a result, I find the Mutual Agreement to End Tenancy signed by the parties is null and void and that as the landlord's did not and do not intend to move into the rental unit the fixed term tenancy that ended on October 31, 2021 converted to and continues on a month to month basis effective November 1, 2021.

In reading the analysis portion of the Interim Decision of February 28, 2022 in its entirety, it is clear the Arbitrator communicated that the tenancy cannot be ended by the landlord because the fixed term is at an end unless the landlord is going to occupy the

rental unit; or, by executing a Mutual Agreement to End Tenancy in an attempt to avoid the Act. Then, a few months after the above decision and the final decision granting orders to the tenants was issued, the landlord's lawyer issued the subject Two Month Notice. However, after the February 28, 2022 Interim Decision was issued, the landlord was diagnosed with a medical condition and had surgery in mid-March 2022.

The landlord submitted that they intend to move to Canada and reside in the rental unit so as to access the medical services in the Province which the landlord considers to be superior to that in the country where the landlord currently resides. I find the diagnosis of the landlord's medical condition may be viewed as a significant change in circumstance for the landlord. As such, I find the landlord's medical condition warrants consideration as to whether that change in circumstance supports a good faith intention to end the tenancy.

The landlord did not appear for the hearing and was not subject to examination by me or cross examination by the tenant. Rather, the landlord provided a brief letter and the one-page hospital discharge document in support of the landlord's medical condition as being the motivation for issuing the Two Month Notice.



The letter from the landlord, addressed to the Residential Tenancy Branch on December 19, 2022, reads:

Statement in support of the need to use my property on account of my health

It is my family's decision that I should return to Vancouver to take a long rest and receive better medical treatments here in BC after I received my diagnosis and treatments in March 2022. My main problem is related to my hearing problems which are related to my brain. The plan and advice from medical professionals is that I should be away from Hong Kong's busy lifestyles and take some rest in a more stable environment. This is the reason why I have inform my tenant that I will be moving into my property as soon as possible. I have complied with the judgment of RTB. I have paid my tenant as RTB wanted. Pest control is done. The mould repairs is not finished because my tenant disagree that repairers can come in. My tenant want to force me to give the mould repairs to her contractor. I think that is not appropriate.

I could recover from my sickness when I return to Canada. Please help.

The hospital discharge document printed on March 14, 2022 provides as follows (with identifying information redacted by me for privacy purposes):

	Attending Doctor(s)	
	Admission Date	11-03-2022 17:11:25
	Discharge Date	14-03-2022

Discharge to: Home

Diagnosis
(Diagnosis responsible for patient's admission)
posterior arachnoid cyst

Principal Procedure(s) & Investigations
12-03-2022:
Left Suboccipital craniotomy and removal of arachnoid cyst

Follow-up Plan

Allergy : No known drug allergy

Prescription : [RX20220304380]

New order :

- 1) GRAVOL (DIMENHYDRINATE) TABLET 50MG (OR EQV.)
50 MG - 2 times daily if needed for 10 day(s)
- 2) PANADOL (PARACETAMOL) TABLET 500MG
1000 MG - 3 times daily if needed for 5 day(s)

Upon consideration of everything before me, I find the landlord's medical condition does not satisfy me that the landlord only has a good faith intention, devoid of any ulterior motive, to end the tenancy. I make this finding based upon the following considerations:

- The medical documentation does not indicate there is an ongoing issue with hearing or the landlord's brain or that it was a medical practitioner's advice that the landlord move to a quieter location
- The medical documentation indicates the landlord was discharged to "home" on March 14, 2022 and there is no indication any follow up is required or that there are any on-going issues past the 10 days of medication prescribed.
- The chronology of events prepared by the landlord or landlord's representative indicates the landlord made the decision to move back to Canada in March 2022 yet the landlord does not issue the Two Month Notice until July 2022 and the landlord does not provide an explanation in the chronology of event as to why the landlord waited to issue the Two Month Notice if the decision had already been made to move back to Canada. [see the landlord's chronology reproduced below for reference]

- After allegedly making the decision to move back to Canada for medical services the landlord's chronology of events is almost exclusively focused on the issues and difficulties the landlord is having with the tenants rather than the landlord's medical condition. [see the landlord's chronology reproduced below for reference]
- If the landlord's medical condition is the true reason behind relocating to Canada, I would expect that the landlord would have done so in the several months that have lapsed since the decision was made over a year ago now, especially considering there is a vacant unit at the residential property the tenants spoke of in December 2022.
- The landlord has asserted that the reason for wanting to reside in the rental unit is due to the landlord's medical condition; however, in the landlord's chronology of events, on July 28, 2022, the landlord also acknowledges that a mould remediation contractor has opined that the remediation may be extension and the rental unit should not be occupied.
- If the Covid travel restrictions were hindering the landlord's ease of travelling back to Canada prior to a couple of months ago, as asserted by the landlord's agent, I find the reason the landlord issued the Two Month Notice in July 2022 to be unclear.
- If the Covid travel restrictions ended a couple of months ago, as asserted by the landlord's agent, and the landlord's reasons for wanting to move to the rental unit are due to medical issues, I find it puzzling that I did not hear of any preparations the landlord has recently undertaken to actually move to Canada.
- It was undisputed that the landlord owns a number of other properties in Canada and one of the reasons for not residing in one of those properties is because they are currently tenanted by long term tenants; however, that was not supported by any corroborating evidence.

Below, I have reproduced the landlord's chronology of events to which I have referred to above, starting with the medical diagnosis and ending with the issuance of the Two month Notice:

March 11, 2022

Landlord diagnosed with posterior arachnoid cyst and was admitted in the hospital. See Medical Diagnosis dated March 14, 2022.

March 14, 2022

Landlord discharged from the hospital. Landlord and family decided that it was in the landlord's interest to return home to Canada where she can not only rest but seek superior medical attention. The Landlord is a Canadian citizen. See Medical Diagnosis dated March 14, 2022 and the Data Page of the Landlord's Canadian Passport.

March 29, 2022

Applicant renewed her Interac email transfers ("**E-Transfer**") of rents to the Landlord for November – December 2021, and January – February 2022. Applicant did not renew E-Transfer rent for March 2022. Applicant also sent funds to the Landlord by E-Transfer for her utilities bill for November 2021 – February 2022. Applicant failed or neglected to transfer fund for March 2022 utilities bill to the Landlord. See evidence of Renewed E-Transfers and, Letter from Landlord's Counsel dated June 30, 2022.

April 1, 2022

Applicant cancelled ALL the E-Transfers for rents and utilities indicated above but nonetheless misrepresented to the Residential Tenancy Branch ("**RTB**") Arbitrator that she had renewed ALL E-Transfers for unpaid rents and utilities. By this action, the Applicant made it impossible for the Landlord to access the funds. See evidence of Canceled E-Transfers and, Letter from Landlord's Counsel dated June 30, 2022.

Based on the above misrepresentation, the Applicant misled the RTB Arbitrator to order that "as the tenants have provided the landlord with their e-transfers, I find the tenants have paid rent in accordance with the requirements set out in Section 26 of the Act and the tenancy agreement". See RTB Decision Dated April 15, 2022, at page 6.

April 1, 2022

Applicant paid \$2,400.00 rent for the month of April but did not pay utilities and gas bill for the month of April in the amount of \$160.91. See Letter from Landlord's Counsel dated June 30, 2022.

April 15, 2022

The RTB released its decision awarding the Applicant the total sum of \$7,251.01 representing \$4,800.00 past rent reductions at \$200.00 per month, \$145.59 HEPA filter, \$587.51 ERMI testing and disinfectant, \$1,117.91 fogging, \$500.00 loss of quiet enjoyment, and \$100.00 fee paid by the Applicant for the dispute resolution application. The RTB also ordered the Landlord to remediate the moulds in the rental unit and put a pest control program in place. Lastly, the RTB ordered that the rent deduction of \$200.00 must

continue until the parties agree that the work is completed, or the Landlord can obtain an order from the RTB that the work is sufficiently completed. See RTB Decision Dated April 15, 2022.

April 25 – 26, 2022

Landlord contacted Abell Pest Control (“APC”) and secured an appointment for April 27, 2022, to immediately comply with the decision of the RTB. Applicant informed Landlord that APC should not come in on April 27, 2022, as scheduled as she and her daughter were sick. See Emails between the technician, landlord’s agent, and the Applicant dated April 25 – 26, 2022.

May 1, 2022

Applicant paid reduced rent of \$2,200.00 but did not pay utilities for the month of May in the amount of \$268.88. See Letter from Landlord’s Counsel dated June 30, 2022.

May 2, 2022

Landlord sought legal advice from counsel on the RTB decision and counsel advised that the RTB decision must be complied with as soon as possible.

May 23, 2022 – July 7, 2022

The Landlord contacted a mould remediation company (“ABM”) to address the mould issue in compliance with the RTB decision. See Emails between the Landlord’s agent and ABM dated May 23 – July 7, 2022, and Emails between the Landlord’s agent and the Applicant dated June 28 – July 3, 2022.

June 1, 2022

Applicant did not pay rent to the Landlord for the month of June. Nor did the Applicant pay utilities for the month of June in the amount of \$89.25. See Letter from Landlord’s Counsel dated June 30, 2022.

June 5, 2022

Landlord formally retained counsel for advice on the RTB decision. Counsel advised Landlord that it was wrong for the Applicant to have cancelled the E-Transfers for past rents and utilities and yet misrepresented otherwise to the RTB Arbitrator.

June 30, 2022

Landlord’s counsel wrote to the Applicant, pointing out her misrepresentation to the RTB Arbitrator on past rental and utilities payments, as well as her neglect or refusal to pay rents and utilities that became due after the RTB decision. The total rents owed by the Applicant to the Landlord as of June 30, 2022, and which counsel demanded must be paid was \$14,200.00. The total utilities owed by the Applicant to the Landlord as of June 30, 2022, and which counsel demanded must be paid was \$1,761.24. The total amount owed by the Applicant to the Landlord as of June 30, 2022, was \$15,961.24.

Counsel on behalf of the Landlord advised the Applicant to deduct the RTB monetary award of \$7,251.01 from the owed \$15,961.24, and that the remainder of \$8,710.23 must be paid to the Landlord by July 7, 2022.

The Landlord through her legal counsel also confirmed to the Applicant that the mould remediation works will be completed by end of July by which time the monthly rent reduction of \$200.00 ordered by the RTB will end. See Letter from Landlord’s Counsel dated June 30, 2022.

July 5, 2022

Applicant sent an email to the Landlord's counsel acknowledging receipt of the demand letter and that she was awaiting legal advice to respond. See Applicant's email dated July 5, 2022, to the Landlord's Counsel.

July 7, 2022

Applicant paid \$7,910.23 to the Landlord. See Letter from Landlord's Counsel dated July 15, 2022.

July 15, 2022

Applicant paid additional \$3,000.00 to the Landlord totalling \$10,910.23, for arrears of rents from November 2021 – July 2022, and for arrears of utilities from November 2021 – June 2022. See Letter from Landlord's Counsel dated July 15, 2022.

Landlord also informed the Applicant that she was shopping for contractors to implement the recommendation in the mould inspection report. See Letter from Landlord's Counsel dated July 15, 2022.

July 20, 2022

Applicant sent an email expressing her preference for her chosen contractor to repair the moulds. Applicant also alleged that the Landlord was delaying the moulds repair works.

July 28, 2022

Considering the Applicant's preference for her chosen contractor, the Landlord contacted the Applicant's chosen contractor for specific questions about the proposed repairs, including whether the repairs could be done with the tenants living in the rental unit. See Landlord's agent's email dated July 28, 2022, to the Applicant's chosen contractor and copying the Applicant.

Applicant's chosen contractor provided answers that suggested that the repair work may be extensive, and that contamination was likely. Applicant's contractor however provided an answer to the question of whether these repairs can be conducted with the Applicant and her family remaining in the rental unit suggesting that the Applicant and her family should not remain in the rental unit while the repair work will be done. See Applicant's chosen contractor's email dated July 28, 2022, to the Landlord's agent.

July 29, 2022

Given her health condition and the need to return to Canada for rest and medical attention, the Landlord through her counsel served the Applicant with Two Month Notice to End Tenancy ("Notice"). See Letter from Landlord's Counsel dated July 29, 2022.

July 29, 2022

Applicant suggested that the Landlord will put her and her family in a hotel if the repairs require multi-day work. See Applicant's email dated July 29, 2022.

[Reproduced as written]

Given the considerations that I have set out above, I find, on a balance of probabilities, that I am unsatisfied the landlord issued the subject Two Month Notice in good faith. Therefore, I grant the tenant's request for cancellation of the Two Month Notice and the tenancy continues at this time.

Since the tenants were successful in having the Two Month Notice cancelled, I award the tenants recovery of the \$100.00 filing fee they paid for this application. The tenants are authorized to make a deduction of \$100.00 from a subsequent month's rent payment in satisfaction of this award.

Conclusion

The Two Month Notice is cancelled and the tenancy continues at this time.

The tenants are awarded recovery of the \$100.00 filing fee they paid for this application. The tenants are authorized to make a deduction of \$100.00 from a subsequent month's rent payment in satisfaction of this award.

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: May 05, 2023

Residential Tenancy Branch