



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1287379 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenants' application, filed on February 9, 2023, 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 January 27, 2023, and effective March 31, 2023 ("2 Month Notice"), pursuant to section 49.

The landlord's agent and the two tenants, tenant KZ ("tenant") and "tenant JK," attended the 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 45 minutes from 9:30 a.m. to 10:15 a.m. The tenants called in late at 9:31 a.m. I did not discuss any evidence with the landlord's agent, in the absence of the tenants.

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

The landlord's agent confirmed that the landlord company ("landlord") named in this application owns the rental unit. He provided the rental unit address.

The tenant identified herself as the primary speaker for the tenants at this hearing. Tenant JK agreed to same.

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.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given an opportunity to settle and declined to do so.

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

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

Preliminary Issue – Service of Documents

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

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

The landlord's agent stated that the tenants were served with the landlord's 2 Month Notice on January 27, 2023, in person and by registered mail. He said that one reason was selected with a checkmark on page 2, and the others were rejected with an "x." The tenant confirmed receipt by registered mail on January 31, 2023. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 2 Month Notice on January 31, 2023.

The tenant stated that they received a "second 2 Month Notice," dated January 27, 2023, and effective March 31, 2023, from the landlord. They said that only one reason

was checked off on the notice. The landlord's agent said that the landlord did not give a second notice to the tenants, and he did not have a copy of it. I informed both parties that this second 2 Month Notice was cancelled and of no force or effect, since the landlord did not issue it or have a copy of it.

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?

Are the tenants entitled to recover the filing fee from the landlord?

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 tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 15, 2021 with the former owner, pursuant to a written tenancy agreement. The landlord purchased the rental unit on November 1, 2021, and continued this tenancy but did not sign a new written tenancy agreement with the tenants. Monthly rent in the current amount of \$2,350.00 is payable on the first day of each month. A security deposit of \$1,175.00 and a pet damage deposit of \$500.00 were paid by the tenants and it was transferred to the landlord from the former owner. The landlord continues to retain both deposits in full. The tenants continue to occupy the rental unit.

The tenants seek to cancel the landlord's 2 Month Notice. The landlord disputes the tenants' application and seeks an order of possession against the tenants.

A copy of the landlord's 2 Month Notice was provided for this hearing. Both parties agreed that the landlord indicated the following reason for seeking an end to this tenancy on page 2 of the notice (which was read aloud by the landlord's agent during this hearing):

- *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 landlord's agent testified regarding the following facts. His family is growing, and his family members are coming from out of town. They need to move into the rental unit, and it is hard for them to stay with the landlord's agent in his current house. When they are visiting from out of town, they need a place to stay.

The tenant testified regarding the following facts. The tenants first had an issue with the landlord's agent on October 29, 2022. He called and requested \$600.00 extra per month in rent from the tenants. The tenants disputed the rent increase. On October 30, 2022, there was no in-person meeting appearance by the landlord's agent. He sent a text message to the tenants on November 4, 2022, requesting an in-person meeting, not a written or text message proposal. On December 1, 2022, the tenants paid rent of \$2,350.00 to the landlord, it was accepted, and the tenants thought that was the end of it. The landlord's agent visited the rental unit on December 1, 2022, and told the tenants to pay \$600.00 extra per month in rent or leave on January 1, 2023. He said he wanted to use the rental unit as a development office. The city does not have any approved development applications from the landlord. The tenants provided evidence of same. The landlord's agent said that he could not afford the mortgage and rented the unit to his son as a primary residence. The landlord's agent went away before Christmas. On January 27, 2023, the landlord's agent's daughter came and gave the 2 Month Notice to the tenants in person. It was missing two pages and the tenants signed that they received only two pages. Pages 3 and 4 were missing, which discussed the compensation. The landlord's agent then mailed a copy of the 2 Month Notice, which included page 3, regarding the compensation, but was still missing page 4.

The tenant stated the following facts. The landlord refused to declare who was moving into the rental unit. The landlord's agent said that he and his wife were moving in and using it as a development office. Now the landlord says it is a family corporation reason. The tenants do not know who is moving in. The tenants want to continue their tenancy. On January 27, 2023, the landlord's agent said that he did not receive the tenants' security or pet damage deposits from the former owner. On February 5, 2023, the previous property management agent confirmed to the tenants that the landlord received the security and pet damage deposits from the former owner. There was evidence sent by registered mail but the landlord did not pick it up. The landlord's agent told the tenants that they had to move out or he would get a bailiff, but the tenants said to wait until the RTB hearing. On May 25, 2023, the landlord's agent showed up with evidence and said he did not need the tenants' evidence, but he accepted it. The landlord's agent said that his extended family is coming in the future from out of town, but before he said that they had already come in April. Now he says they have not

arrived yet. He has an 8-bedroom, 6-bathroom house. He owns three other houses, but the smallest is 5 bedrooms. He provided a list of directors to the tenants. The tenants do not know who the landlord's family corporation members are because some have the same last name as the landlord's agent, and some do not.

The landlord's agent stated the following facts in response. In October 2022, the landlord's agent told the tenants that he is hoping his family members will come in the future, so to prepare to vacate. The tenants refused to move out before June 2023, claiming their kids had to study. He sent a text message to the tenants, but they were busy with their plans. On November 4, 2022, he received a text message from the tenants to meet. The tenant "shouted" and said "bad words" to him. The tenants said there was no proof of family members moving in. He gave the information regarding the landlord's business to the tenants, including the partners and notice of articles. It does not matter if these people are related to him. It does not matter if he has other properties. The landlord's agent and his wife intended to move into the rental unit, initially. Then his son said that he should move family members in from out of town. The landlord's agent was out of town from February to March 5, 2023, so he could not correct the missing pages of the 2 Month Notice. There is a hold on the property from the provincial development office. The landlord cannot place any applications for development until this hold is lifted. The tenants wrote a text message asking about the \$600.00 rent increase. There are no other written messages from the landlord. The landlord's agent did not ask the tenants for a \$600.00 rent increase. He has no plans to demolish the house. He cannot do anything without the permission of the city, regarding development. His house being crowded is not the "tenants' business." He rents his current house, which has a basement suite and three bedrooms upstairs. His son and daughter live with him and his wife, along with their guests. The guests have been there since April.

Analysis

Burden of Proof

During this hearing, I informed both parties that the landlord has the burden of proof, on a balance of probabilities, to prove the reason for issuing the 2 Month Notice to the tenants. The *Act*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of the reason selected on the 2 Month Notice.

The landlord's agent confirmed receipt of the tenants' application, which includes instructions regarding the hearing process. The landlord received a document entitled

“Notice of Dispute Resolution Proceeding,” dated February 10, 2023 (“NODRP”), which 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):

- *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 the *Rules* are provided in the same document.

The landlord received a detailed application package from the tenants, including the NODRP document, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to the landlord to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of the 2 Month Notice, since it chose to issue it on its 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 landlord's agent did not sufficiently present the landlord's 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*. During this hearing, the landlord's agent failed to sufficiently explain and prove the landlord's reason and evidence for issuing the 2 Month Notice to the tenants.

This hearing lasted 45 minutes, so the landlord's agent had ample time to present the landlord's evidence and respond to the tenant's submissions. I repeatedly asked the landlord's agent if he had any other information to present and if he wanted to respond to the tenants' evidence.

Findings

Section 49(4) of the *Act* states that a landlord that is a family corporation may end a tenancy at 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.

According to section 49(8) of the *Act*, tenants may dispute a 2 Month Notice by filing an application for dispute resolution within 15 days after the date the tenants received the notice. The tenants received the 2 Month Notice on January 31, 2023, and they filed their application to dispute it on February 9, 2023. The tenants' application is within the 15-day time limit under the *Act*. The onus shifts to the landlord to justify the basis of the 2 Month Notice. I informed both parties about the above information during this hearing.

A family corporation and close family member are defined in section 49(1) of the *Act* as:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

(a) one individual, or

(b) one individual plus one or more of that individual's brother, sister or close family members;

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.

The landlord’s agent did not indicate who is intending to occupy the rental unit or whether they are close family members, as defined in section 49(1) of the Act above. He stated that he wants to have family members occupy the rental unit when they are visiting from out of town. He did not indicate when or for how long they intend to occupy

the rental unit. I find that the landlord failed to show that any occupants intend to occupy the rental unit for at least 6 months, as required above.

The landlord's agent did not indicate whether the landlord is a family corporation, who owns the voting shares, and whether it is one individual or one individual plus one or more close family members. He did not review any business documents of the landlord, during this hearing, that he claimed he provided to the tenants.

While the landlord's agent indicated that he initially wanted to occupy the rental unit with his wife, and that they may use it as a development office, he later stated that they changed their mind and wanted to use it for visiting relatives and no development applications were allowed because the property was on hold.

I also find that the landlord had ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons explained below.

The tenant provided affirmed testimony that the landlord asked the tenants to pay \$600.00 more in rent per month in October 2022, but the tenants refused. The landlord's agent disputed same, stating that there was no written record.

The tenant provided affirmed testimony that the landlord owns other properties that can be occupied, which are 5-bedroom houses or larger. The landlord's agent agreed that the landlord owns other properties but did not indicate why other comparable units or properties cannot be occupied, rather than the rental unit, claiming that it was none of the tenants' business.

I find that the above demonstrates that there are conflicts and tensions between both parties in this tenancy, which questions the landlord's good faith intention for issuing the 2 Month Notice to the tenants.

As noted above, it is the landlord's burden of proof, to show 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, as this was the reason indicated the 2 Month Notice to the tenants. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met the burden of proof.

Accordingly, the tenants' application to cancel the landlord's 2 Month Notice is granted. The landlord's 2 Month Notice, dated January 27, 2023, and effective March 31, 2023,

is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession against the tenants.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord. I order the tenants to deduct \$100.00 total, on a one-time basis only, from their future rent payable to the landlord for this rental unit and tenancy, in full satisfaction of the monetary award.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is granted. The landlord's 2 Month Notice, dated January 27, 2023, and effective March 31, 2023, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession against the tenants.

The landlord's second 2 Month Notice, dated January 27, 2023, and effective March 31, 2023, is cancelled and of no force or effect.

I order the tenants to deduct \$100.00 total, on a one-time basis only, from their future rent payable to the landlord for this rental unit and tenancy, in full satisfaction of the monetary award for the filing fee.

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: June 08, 2023

Residential Tenancy Branch