



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

This hearing dealt with two Applications for Dispute Resolution filed by the Tenants under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenants’ application for Dispute Resolution was made on April 21, 2023. The Tenants applied to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Two-Month Notice”) dated April 13, 2023, for an order that the Landlord comply with the *Act*, and to recover the filing fee for their application.

The Tenants’ second application for Dispute Resolution was made on June 14, 2023. The Tenants applied to cancel a 10-day Notice to End Tenancy for Unpaid rent dated (the “10-Day Notice”) June 13, 2023, for an order that the Landlord comply with the *Act*, and to recover the filing fee for their application.

The Landlord and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters - *Related Issues*

I have reviewed the Tenants' application, and I note that they have applied to cancel two Notices to end tenancy as well as one other issue. I find that this other issue is not related to the Tenant's request to cancel the Notices. As this matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which 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.

Therefore, I am dismissing with leave to reapply the Tenants' claims for an order that the Landlord comply with the *Act*.

### Issues to be Decided

- Should the Two-Month Notice to End Tenancy dated April 13, 2023, be cancelled?
- Should the 10-Day Notice to End Tenancy dated June 13, 2023, be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover their filing fees for this application?

### Background and Evidence

While I have turned my mind to all of 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 tenancy agreement recorded that this tenancy began on October 11, 2021, as a one-year fixed-term tenancy, that rolled into a month-to-month tenancy at the end of the initial fixed term. That the current rent in the amount of \$3,958.50 is due on the first day of each month, and that the Tenants had paid the Landlord a \$1,950.00 security deposit at the beginning of the tenancy. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Two-Month Notice was served on April 13, 2023, by email service. The Notice indicated that the Tenants were required to vacate the rental unit as of July 1, 2023. The Tenants submitted a copy of the Two-Month Notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse).  
Please indicate which close family member will occupy the unit.
  - The landlord or the landlord's spouse

The Landlord's property manager testified that they received a phone call from the Landlord requesting that they issued the Two-Month Notice to the Tenants. The Landlord's property manager testified that they have a letter from the Landlord stating that they intend to move into the rental unit. The Landlord's property manager testified that they submitted this letter into documentary evidence; however, this letter could not be found in evidence for these proceedings.

The Landlord testified that they issued a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities on June 13, 2023, by email to the Tenants, listing an outstanding rent amount of \$595.50 at the time of service. The Tenants submitted copy of the 10-Day Notice into documentary evidence.

The Landlord testified that the outstanding rent indicated on the 10-Day Notice consisted of \$199.00 in rent and \$396.50 in strata fines.

The Tenant testified that they have paid all of their rent, even making a \$1.50 overpayment each month as they pay their rent in cash and always pay \$3,960.00. The Tenants submitted that the balance the Landlord is attempting to collect are strata fines and not rent. The Tenants submitted a copy of the rent account statements into documentary evidence.

The Landlord testified that the outstanding amount of \$199.00 is rent, stating that the Tenants had failed to pay a rent increase. The Landlord was asked to present evidence to substantiate this claim. The Landlord again testified that they had submitted documentary evidence to these proceedings; however, no evidence was received by the Residential Tenancy Branch from the Landlord for these proceedings.

## Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the documentary evidence provided by these parties that the Landlord served the Tenants with two Notices to end their tenancy, the first dated February 8, 2023, and the second dated February 24, 2023, (the “Notices”) that both indicated that the Landlord was ending the tenancy for their personal use of the property effective April 30, 2023.

The Tenants’ application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the “good faith requirement” as follows:

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.**

As the onus is on the Landlord to demonstrate that they plan to occupy the rental unit and the Landlord has failed to provide any evidence to these proceedings, I find that

there is insufficient evidence to persuade me that the Landlord intends to occupy this rental unit for their personal use. Therefore, I grant the Tenants' application to cancel the Notice dated April 13, 2023, and find that the Notice has no force or effect.

The Landlord is also seeking to end this tenancy due to non-payment of rent. I accept the testimony of the Landlord that they served the 10-Day Notice to the Tenant by email, sent on June 13, 2023.

The Landlord has claimed that the Tenants have not paid a rent increase and are outstanding in their rent payments in the amount of \$199.00. The Tenants have submitted that they have paid all of their rent and that the amount the Landlord is claiming as unpaid rent is actually unpaid strata fines, which cannot be used to end their tenancy under section 46 of the Act.

I find that the parties, in this case, have offered conflicting verbal testimony regarding the amount claimed as unpaid rent on this Notice. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As stated above, it is the Landlord who holds the burden of proving that their Notices were issued in accordance with the Act, therefore it is the Landlord who must provide sufficient evidence over and above their testimony to establish their claims.

As the Landlord has not provided any documentary evidence to these proceedings, I must find that there is insufficient evidence before me, to outweigh the conflicting verbal testimony regarding the rent for this tenancy. Therefore, I find the Landlord has not provided sufficient evidence to prove that there is any rent outstanding for this tenancy that would justify the 10-Day Notice issued by the Landlord. Consequently, I grant the Tenant's application to cancel the 10-Day Notice dated June 13, 2023.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in both their applications to dispute these two Notices, I find that the Tenants are entitled to recover the filing fees paid for both these applications. The Tenants are granted permission to take a one-time deduction of \$200.00, from their next month's rent in full satisfaction of this award.

Conclusion

The Tenants' application to cancel the Two-Month Notice is granted, and I find the Two-Month Notice dated April 13, 2023, is of no effect under the *Act*.

The Tenants' application to cancel the 10-Day Notice is granted, and I find the 10-day Notice dated June 13, 2023, is of no effect under the *Act*.

This tenancy will continue until legally ended in accordance with the *Act*.

The Tenants are authorized a one-time rent reduction of \$200.00 from a future month's rent payable to the Landlord, to recover the cost of the filing fees from the Landlord.

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: August 8, 2023

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Residential Tenancy Branch