



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **CNL, DRI, LRE, OLC**

### Introduction

This hearing dealt with an application by the Tenant under the *Residential Tenancy Act* (the Act) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49.
- Cancellation of a Notice of Rent Increase pursuant to section 43.
- An order to restrict or suspend the Landlord's right of entry pursuant to section 70.
- An order requiring the Landlord to comply with the Act pursuant to section 62.

The Tenants attended represented by A.R. advocate who stated he is the brother of the Tenant R.R.

The Landlord G.D. attended on behalf of both Landlords.

### *Preliminary Issue: Service*

The Landlord acknowledged they were served by the Tenants with their Proceeding Package which included evidence.

The Landlord did not submit any documentary evidence.

*Preliminary Issue: Amendment*

The advocate stated the Tenants were applying for the same relief. Each party provided evidence during the hearing with respect to all claims.

However, the Tenant S.B. overlooked adding the claims under sections 62 and 70.

Section 64(3)(c) and Rule 4 of the *Rules of Procedure* allow for an amendment of an application at the hearing. Rule 4 states the amendment may be allowed in circumstances that can reasonably be anticipated. If sought at the hearing, the amendment need not be submitted or served.

The parties agreed the Tenants share a common space and there are many similarities in their circumstances allowing the three applications to be joined for the hearing. The Landlord acknowledged knowing the Tenants were applying for the same relief which was discussed in detail during the hearing. The Landlord did not object to the evidence on behalf of all Tenants for all claims.

I find the Landlord could reasonably have anticipated that the oversight by the Tenant S.B. would be amended at the hearing to add the claims under sections 62 and 70.

I find the Landlord knew, or should have known, that all the claims on behalf of each Tenant would be addressed at the hearing.

The Tenant S.B.'s application is therefore amended to include claims under sections 62 and 70.

*Preliminary Issue: Digital Evidence*

The Tenant submitted audio recordings as evidence. The Tenant must ensure that the respondent Landlord is served with both the hearing package and the applicant's evidence within the prescribed deadlines.

The RTB Rules set out the procedure for submission of digital evidence by the Tenant. The Tenant must provide a printed description of the digital device on RTB form # 43. Digital evidence must be accompanied by a printed description including a (1) table of contents, (2) identification of photographs (with a numbering or lettering system), (3) a statement for each digital file describing its contents, (4) a time code for the key point in each audio or video recording and (5) a statement as to the significance of each digital file.

The Tenant must serve the Landlord with the digital evidence. Before the hearing, the Tenant must confirm with the Landlord that they can access the files. The party submitting the digital evidence will have to ensure that the opposing party is able to access this evidence. Otherwise, the arbitrator may determine that the digital evidence will not be considered.

When submitting digital evidence, it is recommended that the party in question complete and submit the RTB's Digital Evidence form, Form 43.

In this case, the Tenant did not comply with the Rules.

Accordingly, I will not consider the audio evidence submitted by the Tenant.

Issue(s) to be Decided

Are each of the Tenants entitled to the following relief?

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49.
- Cancellation of a Notice of Rent Increase pursuant to section 43.
- An order to restrict or suspend the Landlord's right of entry pursuant to section 70.
- An order requiring the Landlord to comply with the Act pursuant to section 62.

### Background and Evidence

The parties provided considerable disputed testimony. Not all this evidence is referenced in my decision.

#### *Tenancies*

The parties agreed the tenancy with S.B. began March 2, 2022 for \$700.00 a month payable on the first of the month. The Tenant S.B. provided a security deposit in the amount of \$350.00.

The parties agreed the tenancy with R.R. began on May 1, 2017 for \$650.00 a month payable on the first of the month. The Tenant R.R. provided a security deposit in the amount of \$325.00.

The parties agreed the tenancy with A.P.S. began on November 1, 2021 for \$750.00. The Tenant A.P.S. provided a security deposit of \$375.00.

The Landlord holds all security deposits.

The Tenant stated there is a fourth Tenant in the apartment, now deceased, although the Landlord continues to accept automatic government deposits which the Landlord denied.

#### *Two Month Notice*

The parties agreed the Landlord issued and served a Two Month Notice dated March 27, 2024 with an effective date one month later, April 30, 2024. The Tenant each stated their notice refers only to their first name.

The Tenant S.B. and Tenant A.P.S. stated they received only the first two pages of the four-page notice.

The notices state each Tenant is being evicted so the Landlord's child can move in.

The Landlord acknowledged each Tenant filed to dispute the notices within the 15-day time.

The Landlord stated his adult daughter intends to move into the unit. The Landlord submitted no supporting documentary evidence and did not call any witnesses. The Landlord acknowledged the unit is large for his daughter and partner, but they want a lot of space.

The Tenant stated the Landlord has informed them at various times that different family members are moving in. The Tenant believes the notice is issued to get them out so the Landlord can raise the rent and stop the advocate for the Tenant R.R. from bothering him. The Tenant does not believe the Landlord's daughter will move in. The Landlord has threatened to evict them many times.

The Tenant stated the Landlord owns the building which contains other apartments. They suspect their unit is targeted so the Landlord can get more rent money and do not know why another unit was not selected for occupancy by the daughter.

The Tenant said they found the unit advertised for rent on Facebook on April 15, 2024 and submitted a copy of the ad. The Landlord acknowledged he posted the ad, but said it was for an empty bedroom in the apartment.

### *Rent Increase*

The Tenants testified as follows.

1. They each have a physical or mental disability.
2. They share an apartment in a building owned by the Landlord with several other suites. Each Tenant has a bedroom, and they share common areas.
3. Each Tenant pays rent to the Landlord either in cash or through government payment directly to the Landlord.
4. The Landlord verbally informed each Tenant to add \$50.00 to the monthly rent or they would be evicted. The Landlord did not issue a Notice of Rent Increase or any written demand.
5. They believed the Landlord would evict them if they did not pay the extra money.

6. The Tenant stated the Landlord acts in a manner that causes them to experience fear and to give in to his demands for money as they believe he will evict them if they do not do so.
7. For example, the Landlord goes to the unit without notice. He unexpectedly opens the doors, enters and confronts each Tenant in a manner that terrorizes them. On one occasion, the Tenant called the police who attended at the unit.
8. The advocate testified to efforts to communicate with the Landlord to resolve issues on behalf of his brother (the Tenant R.R.) and the other two Tenants. The Landlord has sworn at the advocate and hung up on him. The Landlord has told the advocate he knows what he is doing is illegal, but he is going to raise the rent anyway. The Landlord has defied the advocate to do anything about it. The Landlord told the Tenant R.R. to get the advocate to stop interfering.
9. Except for two receipts submitted by the Tenant S.B. for the increased amount of rent, the Tenants did not submit any receipts for the extra payment. The Tenants R.R. and A.P.S. stated the Landlord refused to provide receipts.
10. In acquiescence to the Landlord's demand, each Tenant increased their rent payment by \$50.00 in cash a month as follows:
  - a. The Tenant S.B. began paying the extra \$50.00 on September 1, 2023 . She claims a return of the overpayment of \$50.00 for 8 months in the amount of \$400.00.
  - b. The Tenant R.R. began paying the extra \$50.00 on September 1, 2023. He claims a return of the overpayment of \$50.00 for 10 months in the amount of \$500.00.
  - c. The Tenant A.P.S. began paying the extra \$50.00 on November 1, 2023. He claims a return of the overpayment of \$50.00 for 8 months in the amount of \$400.00.
11. The Tenant states the Landlord has informed relevant government agencies that the current rent includes the unlawful \$50.00 increase.

The Landlord denied the entirety of the Tenant's evidence. He stated he was entitled to increase the rent because it was allowed under the RTB guidelines for permitted annual increases.

During the hearing, the Landlord denied receipt of the \$50.00 for the number of months claimed by each Tenant, or at all. The Landlord was not clear about how many months each Tenant paid the extra \$50.00.

The Landlord did not submit a Tenant ledger for each Tenant stating the amount due and paid. The Landlord submitted no supporting evidence.

*Tenant's request for order to restrict or suspend the Landlord's right of entry pursuant to section 70; and for order requiring the Landlord to comply with the Act pursuant to section 62*

As stated earlier, the Tenant claims the Landlord enters the unit without notice and threatens them. As well, he has dumped sewage on their driveway to get them to move.

As a result, the Tenant says they are terrified and feel the Landlord has extorted unlawful rent from them and will do anything to get them out.

In her application, the Tenant S.B. stated:

The Landlord and landlady come into this house without giving us 24 hours notice. We have tried to tell them they need to give us 24 hours written notice, to which the Landlord said, that if I tried to tell him the law, he will kick me out. I said "for what?" and he said he will think of a reason.

We are too scared to address this issue again for fear of being kicked out. I am requesting that the RTB please notify them of the tenancy rules to resolve this.

In his application, the Tenant R.R. stated:

Landlord has been witnessed by numerous parties entering the house without notice and yelling/screaming at Tenants

Landlord has dumped sewage onto the main driveway where Tenant's cars are parked

In his application, the Tenant A.P.S. stated:

The Landlady came into the house illegally at 10:40pm on Sunday 31th March without legally giving 24 hours notice to come in and posted an eviction notice on my door.

The Landlord and Landlady come into this house without every giving us 24 hours notice we have tried to tell them that they need to give us 24 hours notice, to which the Landlord told my roommates sue that if we try to tell him the law he would kick us out we are too scared to address this issue again. for fear of actually being kicked out I'm asking for you the RTB to resolve this issue.

I would like 24 hours notice to be given to enter this main part of the house as they refuse to give us any notice.

The Landlord denied all the Tenant's claims.

### Analysis

#### *Burden of Proof*

The Landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons found in the Notice.

*Residential Tenancy Branch Rules of Procedure - Rule 6.6* provides that when a Tenant applies to cancel a notice to end tenancy, the Landlord must present their evidence first.

Consequently, even though the Tenant applied for dispute resolution and is an Applicant, the Landlord presented their evidence first.

#### *The Act and Guidelines*

To evict a Tenant for Landlord's use of the property, the Landlord has the burden of proving the reasons on the Notice. The parties had contrasting narratives which they provided in detail in the hearing.



*The Residential Tenancy Branch Policy Guideline # 2* states *good faith* is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The Landlord must honestly intend to use the rental unit for the purposes stated on the Two Month Notice.

This Guideline says that the Landlord must show they have no other motive. Otherwise, the question is whether the Landlord had a dishonest purpose.

In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive. The Landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy.

To reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the Landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a Tenant argues that the Landlord is not acting in good faith, the Tenant may substantiate that claim with evidence.

The Guideline directs me to consider motive in deciding whether to uphold the Notice. When the Landlord's good faith is called into question, the Landlord must show they truly intend to do what they said on the Notice. The Landlord must also prove that they do not have another purpose that negates the honesty of intent. They must not have an ulterior motive for ending the tenancy.

### *Credibility*

The Tenant was ably represented by the advocate who provided credible testimony supported by the individual Tenants. The Tenant testified to the issuance of the Two Month Notice, the rent increase, and the failure of the Landlord to comply with laws around entry into their unit and quiet enjoyment.

The Tenant's testimony was straightforward, believable and matter of fact. The Tenant was credible in their evidence that there was an ongoing and unresolved dispute with the Landlord about a \$50.00 rental increase.

The Landlord appeared evasive about all matters in dispute from how many units were in the building, to whether he had received the rent increase.

I have given close attention to the Landlord's assertions that his only motive is to move his daughter into the unit. The Landlord's denial of the Tenant's version of events surrounding the disputed issues does not ring true.

I find the Landlord may want his daughter to live in the unit, but also find he has other motives such as seeking to evict the Tenant because of unresolved and ongoing disputes about a rent increase.

I find the Tenant's version of events with respect to all claims is the most likely to be true.

I therefore give the Tenant's evidence the most weight. Where the parties evidence differs, I prefer the Tenant's evidence.

### *Findings*

The Tenant has raised the good faith intention of the Landlord which I find has some basis.

I have carefully considered the evidence. I find that there was a conflict between the Tenant and the Landlord about the Landlord's demand for cash payment of a rent increase and the intervention of the advocate, a brother of one of the Tenant's, on behalf of all Tenants.

The Tenant asserted that the Landlord has not issued the Two Month Notice in good faith but instead simply wants to get rid of the Tenant to raise the rent. The motive, the Tenant asserted, is retaliation, eviction, and a plan to increase rental income.

I find that the timing of the Two Month Notice during the intensity of these ongoing, unresolved disputes, raises doubts about the bona fide intentions of the Landlord. There are reasonable doubts about the intention of the Landlord's daughter to occupy this unit.

While the Landlord supplied some explanation about the reason for issuing the Notice, I am not convinced that there are no other factors which have given rise to the Notice.

In any event, while the Landlord may indeed intend to use the rental unit for the purposes stated on the Notice, I find there may be more reasons fueling the issuance of the Notice. While the Landlord denied they hold any resentment or ulterior motive, I note the Landlord acknowledged knowing about the rent dispute although he denied terrorizing the Tenant as they claimed or acting rudely to the advocate.

I find the Landlord has not met the burden of proof that they do not have an ulterior motive in issuing the Notice. Therefore, the argument has merit that there is lack of good faith in the issuance of the Notice.

I also find the notices do not comply with section 52 and the complete form was not served upon the Tenant.

I find the Landlord has not met the burden of proof that they intend to do what they said in the Notice.

Consequently, I cancel the Two Month Notice. This tenancy will continue until it is ended in accordance with the agreement and the *Act*.

### *Rent Increase*

Part 3, section 41 of the Act, states that a Landlord must not increase rent except in accordance with sections 42 and 43 of the Act. The Act allows for a rent increase at least 12 months after the effective date of the last rent increase, served in the approved form, at least 3 months before the effective date of the increase by an amount calculated in accordance with the regulations or for an amount agreed to by the Tenants under section 14 of the Act.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord's verbal notice to increase the rent does not comply with the Act and I set aside the increase.

Section 43(5) states If a Landlord collects a rent increase that does not comply with this Part, the Tenant may deduct the increase from rent or otherwise recover the increase.

I accept the Tenant's evidence that they each paid \$50.00 a month in cash to the Landlord for the number of months claimed.

Therefore, I find the Tenant S.B. is entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord in the amount of \$400.00. I direct the Tenant S.B. may deduct \$400.00 from rent on a one-time basis.

I also find the Tenant R.R. is entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord in the amount of \$500.00. I direct the Tenant R.R. may deduct \$500.00 from rent on a one-time basis.

I also find the Tenant A.P.S. is entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord in the amount of \$400.00. I direct the Tenant A.P.S may deduct \$400.00 from rent on a one-time basis.

I find the rent is unchanged from the original amount stated earlier for all tenancies. That is, the rent for each Tenant is as follows:

1. Tenant S.B. - \$700.00 monthly
2. Tenant R.R. - \$650.00 monthly
3. Tenant A.P.S - \$750.00 monthly

*Tenant's request for order to restrict or suspend the Landlord's right of entry pursuant to section 70;and for order requiring the Landlord to comply with the Act pursuant to section 62*

I accept the Tenant's evidence that the Landlord disrupts their occupancy of the unit and enters without notice resulting in the police being called. The Landlord has dumped sewage on their driveway.

I direct that the Landlord complies with the provisions of the Act regarding a Tenant's right to quiet enjoyment, privacy and notice for entry.

Conclusion

The Two Month Notices issued to the Tenants are cancelled. The tenancies continue until ended in accordance with the agreements and the Act.

The Landlord's rent increase is set aside, and the rent remains unchanged.

Each Tenant is entitled to deduct the overpayment from rent on a one-time basis as set out in my Decision.

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 09, 2024

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Residential Tenancy Branch