



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant's first application: CNL, FF
Tenant's second application: CNC, LRE, LAT, OLC, FF

Introduction

This hearing was convened as the result of the two applications of the Tenant for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The Tenant first applied on May 20, 2024, for the following:

- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) issued by the Landlord
- recovery of the filing fee

The Tenant then applied on June 5, 2024, for the following:

- an order cancelling the One Month Notice to End Tenancy for Cause (One Month Notice) issued by the landlord
- an order suspending or setting conditions on the landlord's right to enter the rental unit
- authorization to change the locks to the rental unit
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement
- recovery of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written 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 here; further, only the evidence specifically relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue –

Rule 2.3 states that 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.

Although I find the claims made in the Tenant's two applications are not related to each other, the Residential Tenancy Branch (RTB) administratively joined the applications to be heard together.

In the two applications, the Tenant listed multiple claims. I find the most urgent matters in the two applications are whether either of the Landlord's two Notices will be cancelled or enforced. The additional claims of the Tenant will be addressed within this Decision.

Issue(s) to be Decided

Should the Landlord's Two Month Notice be cancelled or enforced?
Should the Landlord's One Month Notice be cancelled or enforced?
Is the Tenant entitled to recover either filing fee?

Background and Evidence

The evidence showed the tenancy began February 15, 2021, for a monthly rent of \$1900, and a security deposit of \$950 being paid to the Landlord. The current monthly rent is \$2005.

The parties have been in at least two previous dispute resolution hearings, on two separate One Month Notices to end the tenancy. Both Notices, issued in 2022, were cancelled by another arbitrator in a previous dispute resolution hearing in 2023.

Application #1:

Filed in evidence was a copy of the Two Month Notice, which was dated May 5, 2024, listing an effective move-out date of July 14, 2024. The Tenant confirmed receiving it on May 13, 2024, by registered mail. The reason listed on the Notice was that the rental unit will be occupied by the Landlord or Landlord's spouse.

Pursuant to section 7.20 of the Rules, the Landlord's agent proceeded first in the hearing to give evidence to support the Notice.

The agent testified and stated that the Landlord, who is their mother, is currently living in China and has plans to move back to Canada. The agent said that their mother has had health issues the past few years, but those issues have been resolved, meaning that all surgeries have been completed. The agent said that if the Landlord does not come back now, they may lose the opportunity to travel in the future because of their health. The Landlord wants to come back to be around family, which included their grandchildren. The agent said that the Landlord owns no other properties and that they bought the residential property in 2014, stayed there 4-5 years since then. The agent, when asked, said their mother has residence rights in Canada.

The agent submitted evidence of another written tenancy agreement, for which the agent said their mother took out a short-term rental for July 15-August 14, 2024, until the Landlord could have possession of the rental unit.

The Landlord submitted a significant amount of evidence, in large part, relating to past disputes and alleged issues with the Tenant.

In response, the Tenant testified and stated that the agent has demonstrated during the whole tenancy that they want to get rid of him, because the rental unit had been an unauthorized AirBnB. The Tenant said they served the Tenant a One Month Notice in 2022, and a second One Month Notice in 2022, and now in total, since 2022, they have been served four eviction notices. In the past, according to the Tenant, the agent talked to the strata council about renovations and they have also tried to sell the home. The Tenant stated the agent is on a continuous path to evict them and pointed out that the evidence said to be the statement of the Landlord is written in the agent's perspective, not the Landlord, and they are creating a story. The Tenant pointed out the rental unit address on the short-term tenancy agreement said to be for the Landlord shows the same address as the agent.

Application #2:

Filed in evidence was a copy of the One Month Notice, which was dated May 30, 2024, listing an effective move-out date of July 14, 2024. The cause listed on the Notice was *“breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so”*.

In the Details of the Events of the One Month Notice, the Landlord wrote the following:

Details of the Event(s):

1. Since 2021, Tenants never wanted to give the mails to the landlord back to us. We have requested them many times and explained that landlord left Vancouver since Covid so the mails from the City, Province and banks were very important. Even with several Written Notice, tenants chose to violate the lease and ignored landlord's right for 3 years.
2. During the 1st house inspection in 2024, May 23, we discovered that tenants changed the bottom lock without landlord's permission. We requested tenants to change it back to original setting/provide one key on the site and in Written Notice, but tenants rejected and refused to a lock inspection on May 30, 2024. Tenants also threatened us that he will call police if we come back to check the lock again. We came back to check and found that landlord still has no access to the locks on the suite entrance door. So in case of emergency, landlord cannot enter.

Pursuant to section 7.20 of the Rules, the Landlord's agent proceeded first in the hearing to give evidence to support the Notice.

The agent testified and stated that after serving the Two Month Notice, they went to the rental unit for an inspection and they could not open the door as their key could not open the bottom lock. This was noticed on May 23, 2024, and on May 24, 2024, they served a written notice to the Tenant to correct the situation. They went back on May 30, could not use their key to the bottom lock and the One Month Notice was given.

In response, the Tenant testified and stated that they were given two keys to the top lock of the front door, but were never given a key to the bottom lock. The Tenant submitted that they have only ever used the top lock and denied changing the locks.

The Tenant referred to their video evidence from a camera inside the rental unit, which showed the Landlord's agent and a companion entered the rental unit when they, the Tenant, was not home, on May 30, 2024. The Tenant's evidence showed communication to the Landlord's agent about entering their suite without proper notice to enter.

The Tenant referred to their evidence which showed photos of the multiple locks on the front door, which they said showed the locks had not been changed as it was the same one from the beginning of the tenancy until present.

The Tenant said they asked the Landlord for a 3rd key, only to be able to give a neighbour for a quality of life matter, in case they were locked out for some reason, but the request was denied.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Application #1, relating to a Two Month Notice:

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

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Tenancy Policy Guideline 2A speaks to good faith and is reproduced, in part, 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)).

The Landlord submitted a significant amount of evidence, a large amount of which I find was historical in nature and was intermingled with their evidence for the Tenant's separate application for cancellation of the One Month Notice. For instance, upon review, I determined that the evidence, many documents being from 2021 and 2022, related to the past two dispute resolution proceedings concerning two other Notices to end the tenancy for cause, both of which were cancelled by another arbitrator.

In these matters, I find the Landlord submitted insufficient evidence that they intended to use the rental unit for personal occupancy. The Landlord's agent submitted a document, a written tenancy agreement, to show that their mother took out a short term rental until the dispute on the Two Month Notice had been completed. The short term tenancy agreement was for July 15, 2024 through August 14, 2024, for a monthly rent of \$4000. However, the address being rented was the same address of the Landlord listed on the tenancy agreement, and the same address as the Landlord's agent, and there was no proof of payment. Further, no evidence was submitted to support whether this was a legal rental agreement under the Short-Term Rental Accommodations Act.

The Landlord's agent filed no travel documents or proof of travel plans or residency status. Apart from that, even if the short-term tenancy agreement was legitimate, which I question, the Landlord would have been present to provide direct testimony and be subject to cross-examination, if only through an interpreter, and they were not.

A written statement, said to be from the Landlord, but not proven, only suggested that their medical issues prevent them from flying in the future, but there was insufficient evidence that this was true.

Apart from that, I also find the Two Month Notice was not issued in good faith, as I find the evidence shows that the Landlord had an ulterior motive. As noted, the Landlord's evidence was filled with recounting past issues with the Tenants, dating back to 2021. With this Two Month Notice, along with the One Month Notice also in this dispute, the Landlord has attempted to evict the Tenants 4 times. While not relevant in considering whether the Two Month Notice should be enforced, I find it relevant when considering the Landlord's good faith in these matters. The Landlord's evidence repeatedly mentioned they had issues throughout the tenancy, including currently with the Tenants. The Landlord filed evidence about notices to enter in 2022, among many other documents relating to past, historical issues.

These statements, along with a continuing pattern of attempting to evict the Tenants, leads me to conclude the Landlord did not issue the Two Month Notice in good faith and had an ulterior motive when doing so, which was to evict the Tenants because of perceived ongoing issues.

As I have found insufficient evidence that the Landlord intends to use the rental unit for personal occupancy and insufficient evidence that the Two Month Notice was issued in

good faith, without ulterior motive, I **ORDER** that the Two Month Notice dated May 5, 2024, be cancelled and it is of no force or effect.

I further **ORDER** that the tenancy continue until ended in accordance with the Act.

For this reason, I grant the Tenant's application for cancellation of the Two Month Notice.

Application #2, relating to a One Month Notice:

When a tenant disputes a One Month Notice to end tenancy, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met that burden.

Section 47(1)(h) of the Act permits a landlord to end a tenancy if the Tenant has failed to comply with a material term of the tenancy agreement and was not corrected the situation within a reasonable time after the landlord gives written notice to do so.

With respect to the first part of the Landlord's One Month Notice, the Landlord or agent wrote that the Tenant never gave the Landlord's mail to the Landlord, who had gone to live in China by that time. I find whether the Tenant gave the Landlord any mail that came to the rental for the Landlord or not is not a tenancy related issue. The Tenant is not obligated to deal with the Landlord's mail. The Landlord or agent could have put in a mail forwarding address with Canada Post, and as the agent/daughter lives in the same city, it is puzzling why they did not. I do not find the issue regarding the Landlord's mail coming to the rental unit is a material term of the tenancy agreement, and after reviewing the tenancy agreement, I do not find it is a term at all.

The Landlord's agent is cautioned in the future against manufacturing reasons to try and end the Tenant's tenancy.

As to the matter relating to the Landlord's agent's allegations that the Tenant changed the locks and they could not enter the rental unit, I find the Landlord submitted insufficient evidence of a lock change. The Tenant said they were not given a separate key to the bottom lock and have never used it during the tenancy. Additionally, the

Tenant provided clips from their inside camera showing the Landlord's agent and a companion entering the rental unit on their own on May 30, 2024. I find this is sufficient evidence from the tenant that they did not change the bottom lock.

For these reasons, I find the Landlord submitted insufficient evidence that the Tenant changed the bottom lock to the rental unit.

Having addressed the details of the causes in the Notice supporting the cause listed and found insufficient evidence of either of the allegations, I find the Landlord's One Month Notice to End Tenancy for Cause, dated May 30, 2024, for an effective move out date of July 14, 2024, is not valid and not supported by the evidence, and therefore has no force and effect.

I **ORDER** that the Notice be cancelled and it is of no force or effect. I further **ORDER** that the tenancy continue until ended in accordance with the Act.

For this reason, I grant the Tenant's application for cancellation of the One Month Notice.

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

Section 70 of the Act states for an Arbitrator to suspend or set conditions on a landlord's right to enter the rental unit if they are satisfied that the landlord is likely to enter the rental unit in contravention of section 29 of the Act, which requires the landlord to give 24 hours written notice before entering the rental unit.

In these matters, there was insufficient time to consider this request of the Tenant in the 59-minute hearing on consideration of the Landlord's two Notices to end the tenancy on two separate applications of the Tenant.

Therefore, I **dismiss** the Tenant's request under section 70 of the Act, **with leave to reapply**. I make no finding that the Landlord has entered the Tenant's rental unit without notice, as claimed by the Tenant as a result. It is noted that leave to reapply is not an extension of any applicable time limit.

Information for the Landlord

In the event that the Landlord has entered the rental unit illegally, without proper notice, which I have not found, I provide this information to the Landlord.

A landlord **may not** enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.

The Landlord must provide the Tenant with a proper written notice to enter the rental unit, which must be at least 24 hours in advance, **and** in consideration of the deemed service provisions of section 90 of the Act. If the Landlord chooses to attach the notice of entry to the Tenant's door or send it by email, the Tenant is not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the Landlord chooses to send the notice by registered mail or mail, the Tenant is not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

Is the Tenant entitled to authorization to change the locks and an order requiring the Landlord to comply with the Act, regulation, or tenancy agreement?

In these matters, there was insufficient time to consider these additional requests of the Tenant in the 59-minute hearing on consideration of the Landlord's two Notices to end the tenancy on two separate applications.

Therefore, I **dismiss** these requests of the Tenant's, **with leave to reapply**. It is noted that leave to reapply is not an extension of any applicable time limit.

Recovery of the filing fee

As the Tenant's applications had merit, I grant the Tenant the recovery of the \$100 filing fee for each application. I **authorize** the Tenant a one-time rent reduction in the amount of **\$200** 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.

Cautions to the Landlord

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

The Landlord has now issued 4 different notices to end the tenancy to the Tenant in the past two years, and all have been dismissed through the dispute resolution process. What this means, is the Notices have been unfounded and unsupported by the evidence.

The Landlord is cautioned that should they continue to issue unfounded Notices seeking to end the tenancy, the Tenant may file an application for Dispute Resolution to seek monetary compensation for loss of quiet enjoyment and use this Decision in support, if they so choose.

Conclusion

The Tenant's two applications seeking cancellation of a Two Month Notice and a One Month Notice have been granted. Both Notices have been ordered cancelled and I have ordered the tenancy continue.

The Tenant's request to recover the filing fees has been granted.

The Tenant's request for the separate and distinct claims made on their second application as noted above have been dismissed, with leave to reapply.

The Landlord has been issued cautions as noted above.

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: July 22, 2024

Residential Tenancy Branch