



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes: _____ CNL, MNDCT, OLC, PSF, LAT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed they received the 2 Month Notice posted on their door by the landlord on January 16, 2021, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received copies of the tenant's dispute resolution hearing package and written and digital evidence, I find that these materials were served to the landlord in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received copies of the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*.

Preliminary Issue- Tenant's Application for a Monetary Award

The RTB's Rule of Procedure 2.3 reads as follows:

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.

In this case, I find that the principal issue identified in the tenant's application was their application to cancel the landlord's 2 Month Notice. In the event that this tenancy were to continue, the tenant has also asked for the issuance of a number of orders designed to resolve the disputes that have been arising during the course of this tenancy. During the time available, I advised the parties that it seemed unlikely that a hearing of this matter could also consider the tenant's application for a sizeable monetary award of \$6,350.00.

For these reasons, I advised the parties that I was severing the tenant's application for a monetary award from the remainder of the application, which I was able to consider during the hearing of this matter. The tenant's application for a monetary award is dismissed with leave to reapply.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

Background and Evidence

On March 11, 2020, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) that was to enable the tenant to live in the lower level of their two level home from March 15, 2020 until March 31, 2021. At the end of this tenancy, the Agreement is to continue as a month-to-month tenancy until ended in accordance with the *Act*. The monthly rent for this two bedroom basement suite is \$1,400.00, payable in advance on the first of each month, plus 35% of the utilities. The landlords continue to hold the tenant's \$700.00 security deposit paid on March 9, 2020.

In their application for dispute resolution and their written, photographic and video evidence, they submitted that the landlords have persistently disturbed them during the course of this tenancy. When the tenant complains or registers concerns with the landlords' about the noise they create or interfere with the tenant's quiet enjoyment of

their rental unit, the tenant alleges that the landlords tell the tenant that if they are not happy with the tenancy the tenant should move. The tenant provided written evidence that as early as May 2020, Landlord JC (the landlord) was advising them that if they did not want to live there any longer that they would waive their right to hold the tenant to the fixed term of this tenancy that was not to expire until March 31, 2021. The tenant's video evidence included Landlord RC telling the tenant that they could leave if they were not satisfied with the way that the landlords were interacting with the tenant.

In their application for a monetary award of \$6,350.00 and in extensive notes that they have kept during this tenancy, entered into written evidence by the tenant, the tenant identified each of the behaviours that they were attributing to the landlord that the tenant believed warranted the issuance of a monetary award against the landlords. These included concerns about the following:

- storage of the landlords' bicycles in a storage closet that had been provided to the tenant;
- the noise created by the landlords at all times of the day, but in particular during the early morning hours;
- the landlords' alleged unauthorized entry into the tenant's rental suite;
- the landlords' alleged attempt to break into the tenant's rental suite, where police had to be called to intervene;
- Landlord RC's yelling at the tenant in common areas of this property;
- Landlord RC's calling the tenant crazy when they realize that the tenant has mental health issues;
- one of the landlords spraying the tenant with water while the tenant is in the common area of the property;
- the landlord's dropping of garbage from their balcony onto the tenant as the tenant walks underneath.

The landlord's 2 Month Notice, entered into written evidence, identified the following reasons for seeking an end to this tenancy by March 31, 2021, which also coincides with the end date for this fixed term Agreement:

- *The rental unit will be occupied by the landlord or the landlord's spouse....*

At the hearing, the landlord explained that they had been planning to upgrade the plumbing in the kitchen of their part of this house for some time. The landlord said that even before they rented the basement suite to the tenant, they were debating whether they needed this space themselves as they knew that the upstairs would need to be renovated. The landlord testified that they have major water damage in their kitchen

and that the linoleum is curling as a result of this ongoing problem. They included the following description of this problem in their written evidence:

... Over the past year, our kitchen has had multiple leaking pipe issues that have caused significant damage. We have decided it is time to do a complete renovation of our kitchen in the upper level. The renovations we plan to do are extensive and we will require the utilization of the kitchen in the lower level to satisfy our daily needs. We utilize our kitchen multiple times, daily because we cook and prepare several of our meals. Our kitchen in the upper level will be out of commission for a while, and with pandemic measures in place, the renovations may take a little longer than usual. Having the kitchen in the lower level of our home will be necessary for allowing us to maintain usual productivity and routines in our daily lives. The extra space will also be helpful during the renovations in maintaining social distancing and productivity, as our daughter works from home daily...

They gave undisputed sworn testimony that they had consulted with the contractor who had renovated the tenant's basement suite and obtained an estimate from that contractor for a major renovation to the landlords' kitchen in December 2020. The landlord entered into written evidence an itemized copy of the \$31,000+ estimate as well as an invoice from the previous work done by this contractor on the tenant's rental suite in 2019.

The tenant said that if the landlords needed the use of the tenant's kitchen for a short period of time, they could either make arrangements with the tenant to do so while the tenant remains living there or the tenant could attempt to reside with their male friend for a short period. The tenant said that they start work at 11:00 a.m. most days and that something could perhaps be arranged to allow the landlords to use the tenant's kitchen if it was left clean after the landlord's use of the premises.

In their application, in their written evidence and in their sworn testimony, the tenant maintained that the landlords were not acting in good faith as they are required to do in attempting to end this tenancy for the reason stated in that Notice. The tenant cited the provisions of section 49(3) of the *Act* in objecting to the landlords' 2 Month Notice.

They maintained that the landlords have been threatening the tenant with eviction for many months and that the true reason for issuing the 2 Month Notice was to stop the tenant from exercising her legal rights under the *Act* and under their Agreement. The tenant observed that the work the landlord has identified as their reason for ending this tenancy would not likely require the tenant to be out of the rental unit for more than a

week or so. The tenant also questioned the landlord's claim that the kitchen plumbing has to be repaired to stop flooding. The tenant and their male friend, who gave testimony as a witness, testified that they have not seen any evidence of flooding from the landlords' kitchen about the tenant's rental suite.

The tenant also referred to the following portions of Residential Tenancy Branch (RTB) Policy Guideline 2A in asserting that the landlords have failed to demonstrate that they intend to use the premises for a six-month period following the eviction of the tenant:

The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).

After the tenant cited the provision outlined in the RTB's Policy Guideline 2.A requiring a landlord to live in the rental unit for at least six months following an eviction, the landlord provided an additional reason why the landlords needed to end this tenancy. The landlord said that their workplace had been asking them to work from home for some time and that their daughter lives at home and teleworks from their bedroom. The landlord said that they were hoping to use the additional space in the tenant's rental suite as a location where they could work during the COVID-19 pandemic. They provided no evidence from their daughter or from their workplace to confirm this testimony.

The tenant testified that the landlords already had a room in the lower level of this house which the tenant claimed they have heard the landlord using as an office for business related telephone conversations. The landlord said that this was merely a storage room and that they do not conduct any business meetings from that area of the house.

Analysis

Pursuant to section 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice. As the tenants submitted their application to cancel the 2 Month Notice on January 16, 2021, they were within the time limit for doing so, and the landlords must demonstrate that they meet the requirements of the following provisions of section 49(3) of the *Act* to end this tenancy:

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.

When an allegation of failing to act in good faith is made by tenant, as occurred in this case, the landlord also bears the responsibility of establishing that they are indeed planning to use the rental premises for the purpose stated in the 2 Month Notice.

RTB Policy Guideline 2A provides guidance to Arbitrators with respect to considering allegations by tenants that landlords are not acting in good faith, which reads in part as follows:

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...

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...

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 other ulterior motive...

In addition to the portion of Policy Guideline 2A cited by the tenant at this hearing, I have also taken into consideration the following additional portions of this Policy Guideline:

Vacant Possession

... Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E).

Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room...

Although the landlord has linked their 2 Month Notice to their need to undertake repairs to their kitchen, they have only identified the reason for issuing the 2 Month Notice as their intention to use the space themselves.

Whether or not the repairs and renovations the landlord is planning would require the tenant to vacate the rental unit altogether or could be accommodated while the tenant remains living there is not at issue with respect to the landlord's 2 Month Notice. Rather the landlords' 2 Month Notice relies on the extent to which the landlords have met their burden of proof in establishing that they will in good faith reside and occupy the rental unit themselves for at least a six month period. By the landlord's own admission, the renovations to their kitchen which the landlord claimed required them to use the tenant's kitchen would only last one or two months. In this regard, I note that the tenant doubted that it would truly take one or two months to complete this renovation, estimating that a full kitchen replacement might only require the landlords to be without the use of their kitchen for a week. Although the landlord has plans to undertake a major renovation of their kitchen, the landlord has not established their need for use of the kitchen in this two bedroom rental suite beyond the one or two months the landlords claim it will take for the renovations to be completed.

As the tenant correctly pointed out at the hearing, RTB Policy Guideline 2A tasks the landlord with demonstrating their good faith intention to use the tenant's rental suite for at least a six-month period. The landlord's brief written evidence submission makes little mention of the sworn testimony that the landlord provided at the hearing that the rental suite was also needed as work space for them and their daughter. They provided

no supporting evidence that their place of employment has offered this option to the landlord, that their daughter works from home, or and little that they will have any ongoing need for this space in a few months when the projected renovations are completed and when the COVID-19 pandemic may very well present different social and workplace needs than are currently in place.

Although they have obtained an estimate for repair work to their kitchen, the landlord has not retained the contractor. They provided no estimate as to when this work would be undertaken. The landlord provided no evidence to support their claim that they would not need any building permits or authorization from building and inspection officials to undertake the work that they claim will necessitate an end to this tenancy. On a balance of probabilities, I find that the landlord has not demonstrated that once these renovations are completed that they would continue to occupy or even reclaim the rental suite as part of their own living space. For these reasons, I allow the tenant's application to cancel the 2 Month Notice.

The landlord's provision of scant evidence to support their request for an end to this tenancy lends some support to the tenant's assertion that the landlords have sought an end to this tenancy on the end date of their Agreement, primarily because they are frustrated with the tenant's frequent demands that they abide by the terms of their Agreement and the *Act*. Since I find that the landlords have not established that they are truly intending to use the premises for the purposes identified in their 2 Month Notice for the six month period required to end this tenancy for landlord's use of the property, there is less need to consider the tenant's claim that they are not acting in good faith. However, in this regard, I find that even if the landlords had met the standard of proof required to confirm that they had issued the 2 Month Notice for valid reasons, the tenant may very well have provided sufficient written and digital evidence that the landlords have failed to act in good faith in issuing the 2 Month Notice to the tenant.

There is very clearly a lengthy history of negative interactions between these parties, which has even led to the apparent involvement of the police at one stage. It is truly unfortunate that the parties have difficulty co-existing with one another, especially since the landlords live above the tenant in this two unit dwelling.

Given that this tenancy is continuing, I am issuing the following orders, which I explored with the parties at this hearing with a view to clarifying expectations between the parties in this tenancy:

1. I order the landlords to remove bicycles and any other items they may have stored in the storage closet the tenant has been allowed to use during this tenancy.
2. I order that, with the exception of true emergency situations, the landlords provide at least 24 hours written authorization to access any portion of the tenant's rental suite. This request for authorization to access the tenant's rental suite must explain the reason for the requested access and the requested time, and must not be more frequent than once every 30 days as is permitted under the *Act*.
3. I order the landlords to refrain from vacuuming or moving furniture earlier than 8:00 a.m.
4. I order the landlord provide the tenant with full and sole access to the laundry room each Sunday commencing at 8:00 a.m. and extending until 9:00 p.m. that day. Alternatively, the landlords may choose to provide the tenant with their own key to the laundry room so as to access the laundry room on Sundays between those hours.
5. I order the landlords to the extent possible to avoid interactions with the tenant, particularly in common areas of this property.

While I make no further orders with respect to the tenant's claim that the landlords are frequently yelling at one another and "fighting" and create an undue level of noise, particularly in the mornings, I remind the landlords of the following provisions of the *Act* which guarantee a tenant's right to quiet enjoyment of the premises:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The landlords are also reminded of the provisions of section 65 of the *Act*, which enable a tenant to make a monetary claim for any loss in the value of their tenancy:

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

I dismiss the tenant's application for a monetary award with leave to reapply.

Conclusion

I allow the tenant's application to cancel the 2 Month Notice. This Notice is of no continuing effect. This tenancy continues until ended in accordance with the *Act*.

1. I order the landlords to remove bicycles and any other items they may have stored in the storage closet the tenant has been allowed to use during this tenancy.
2. I order that, with the exception of true emergency situations, the landlords provide at least 24 hours written authorization to access any portion of the tenant's rental suite. This request for authorization to access the tenant's rental suite must explain the reason for the requested access and the requested time, and must not be more frequent than once every 30 days as is permitted under the *Act*.
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5. I order the landlords to the extent possible to avoid interactions with the tenant, particularly in common areas of this property.

I dismiss the tenant's application for a monetary award with leave to reapply.

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: March 22, 2021

Residential Tenancy Branch