



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, MNDCT, LAT, OLC, FFT

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice"); for monetary compensation, and other remedies.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the relevant submissions of the other party pursuant to the Rules of Procedure.

I confirmed the parties had exchanged their respective hearing materials and evidence with each other and neither party took issue with service. Therefore, I admitted the materials of both parties.

The tenant confirmed that he continues to occupy the rental unit and seeks to continue the tenancy. As such, I determined it necessary and appropriate to proceed to resolve the dispute concerning the Two Month Notice. I also heard the tenant's monetary claim related to the landlord's unlawful entry into the rental unit. The other remedies sought by the tenant were dismissed with leave to reapply as permitted under Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

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.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

Issue(s) to be Decided

1. Should the Two Month Notice to upheld or cancelled?
2. Has the tenant established an entitlement to compensation against the landlord for the landlord's unlawful entry?
3. Award of the filing fee.

Background and Evidence

The tenancy started on June 1, 2022 on a month to month basis. The tenant is required to pay rent of \$900.00 on the first day of the month. The rental unit is a bachelor suite located below the landlord's home.

It is undisputed that on October 20, 2022 the landlord entered the rental unit without gaining the tenant's prior consent or issuing a notice of entry to the tenant and the landlord's entry was captured on surveillance cameras the tenant had installed in the rental unit.

The landlord acknowledges she entered unlawfully and stated the purpose of her entry was to inspect the bathtub area where mould had been seen a week prior during an inspection of the rental unit and the landlord instructed the tenant to clean up the mould. The tenant pointed out that he had given the landlord access to inspect the unit the week prior to October 20, 2022 and the tenant would have given the landlords access to inspect the bathroom again if they had requested such. The landlord acknowledged she made a mistake, she did not know the law then, but that now she knows and she will not do it again.

Shortly after the tenant discovered the landlord had unlawfully entered his unit he communicated to the landlords that he would be making a claim against the landlords

for compensation. The tenant alleged that the landlord broke his laptop and his EarPods when she entered the unit on October 20, 2022. The landlord denied touching or damaging the tenant's property when she entered.

The landlords requested to see the video footage, which the tenant eventually provided to them. The tenant pointed out that his camera only captures 10 seconds at a time after motion is detected; however, the video captures the landlord opening his desk drawer where the tenant stores his electronics and the laptop can be seen falling from the drawer. The tenant testified that he found the laptop and Earpods on the floor. The landlord was of the position the video does not show the laptop falling or the landlord touching the tenant's electronics.

The tenant went to a retail electronics store on October 21, 2022 and presented his Ear pods for inspection. The store issued an estimate describing the EarPods, originally purchased in 2020, as missing the right ear piece and being out of warranty. It was recommended the EarPods be replaced at a cost of \$115 plus tax.

On November 14, 2022 and tenant obtained a quotation from the electronics store to repair the laptop. The store provided an repair estimate of \$1854 but also noted the laptop was purchased in 2015 and the parts are no longer available so the recommendation was to purchase a new laptop. No price was provided for the cost of a new laptop.

The tenant seeks compensation equivalent to the repair and replacement cost of the above items. However, the tenant also acknowledged that he did not repair the laptop but he purchased a used one from a co-worker for \$800.00.

The landlords maintain that if the landlord damaged the tenant's property, they would pay for the damage without any issue but that there was no damage caused.

On November 12, 2022 the landlords served the tenant with a Two Month Notice with a stated effective date of January 31, 2023. The reason for ending the tenancy, as indicated on the Two Month Notice, is that the landlord's child would be occupying the rental unit. The tenant filed to dispute the Two Month notice within the time limit for doing so.

The landlord's son testified that he intends to move into the rental unit because he is going to build a new house. The landlord's son demolished the old home on the property he owns approximately four weeks ago and he just received the permit to

begin construction of his new home. The permit process had been ongoing for some time, with a lot of “back and forth” with the City.

The landlords provided a copy of a receipt for a building permit application that was paid on 08/03/2022. The landlord’s son testified that 08/03/2022 represents March 8, 2022 and that he did not know how long it would take to get the permit when he negotiated the tenancy agreement with the tenant on his parent’s behalf. The landlord’s son stated that he just had his first child and he and his wife and child need to live somewhere while their new house is being built. The rental unit is located near the landlord’s son’s new house and work.

The landlord’s son stated the timing of the Two Month Notice has nothing to do with the dispute over the landlord’s unlawful entry and the tenant’s request for compensation.

The tenant is the position the landlord is seeking to end the tenancy because of their dispute over the landlord’s unlawful entry and because the tenant informed the landlords that he would be making a monetary claim against them. The tenant pointed out that the landlord’s son applied for the building permit in March 2022 yet when the tenancy formed in June 2022 there was no mention that this was going to be a short term tenancy so that the landlord’s son could move in. Rather, the tenant was looking to rent a unit for the long term when he decided to enter into the tenancy.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Monetary compensation

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;

- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, it was undisputed and unopposed that the landlord unlawfully entered the rental unit on October 20, 2022. At issue is whether the landlord damaged the tenant's personal property (the laptop and EarPods).

The tenant testified that the landlord's act of opening his desk drawer, where he stored his electronics, caused the laptop to fall and become damaged and that this was captured on the video footage he provided as evidence. I have watched the videos the tenant provided several times and at no time do I see the landlord opening the desk drawer and I do not see anything falling from the desk. Rather, the landlord can only be seen lifting up the edge of the tablecloth that is on the desk. In the rest of the video footage the landlord does not touch anything except the door knob when she leaves. The video also has good sound as the landlord's footsteps can be loudly heard in the video yet I cannot hear anything drop, fall or break during the time the landlord was in the rental unit.

Based on the video footage, I find I am unsatisfied the landlord caused damage to the tenant's personal property when she entered the rental unit. Therefore, I deny the tenant's request for the cost to repair or replace his laptop or EarPods.

Despite the above, I find it abundantly clear that the landlord entered the rental unit unlawfully, in violation of section 29 of the Act, and doing so the tenant was clearly bothered by it, and rightfully so. Section 28 of the Act provides that a tenant is entitled to "quiet enjoyment" of the rental unit and this includes the right to privacy and exclusive possession of the rental unit subject only to lawful entry by the landlord. Therefore, I award the tenant a nominal award of \$100.00 for loss of quiet enjoyment due to the landlord's lawful entry on October 20, 2022.

Two Month Notice

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

The reason for ending the tenancy, as indicated on the Two Month Notice, is consistent with section 49(3) of the Act which permits a landlord to end a tenancy where:

(3) 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

[My emphasis added]

In this case, the landlords have put forth that their son intends to occupy the rental unit. A child of the owner meets the definition of a “close family member” under section 49 of the Act.

The tenant called the landlord’s good faith intention into question, pointing to the parties’ dispute over the landlord’s unlawful entry and the tenant’s request for compensation prior to the issuance of the Two Month Notice.

Residential Tenancy Policy Guideline 2A provides information and policy statements with respect to ending a tenancy for landlord’s use of property. Under the heading “Good Faith”, the policy guideline provides:

B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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.

[My emphasis added]

It is before me to determine whether the landlords have demonstrated that they had only a good faith intention to end the tenancy when the subject Two Month Notice was issued on November 12, 2022.

The landlord's son testified that he requires the rental unit to use as his residence while he is building a new house for his family. However, I find the landlord's submission and evidence is not sufficiently complete or persuasive considering the following factors:

- The landlord's son testified that he demolished his residence approximately four weeks ago but he did not state where he and his family have been residing for the past four weeks or provide a reason they cannot continue to stay where they are currently.
- The landlord's son stated that he "just" received his building permit, which I infer to mean just prior to the hearing date, but that does not explain why the Two month Notice was issued on November 12, 2022.
- The rental unit is a small bachelor style unit and I cannot fathom that it would be suitable for the landlord's son, his wife and small child to occupy.
- The building permit application receipt was issued to a corporation and I cannot see any obvious connection between the corporation or the property address on the receipt to the landlord's son.
- The landlord's son stated that the permit application was paid for on March 8, 2022 yet the tenancy started after that, in June 2022, and there was no indication at that time that the tenancy would be short term so as to accommodate the landlord's son and his family when they build their house.

When I consider the above, coupled with the fact that the parties were in a dispute over the landlord's entry and the tenant's pursuit of compensation against the landlord's, I

find I am unsatisfied the landlords have met their burden to prove that they wish to end the tenancy for good faith reasons only, and without any ulterior motive. Therefore, I grant the tenant's request for cancellation of the Two Month Notice and the tenancy continues at this time.

Filing fee

The tenant's application had merit and I award the tenant recovery of the \$100.00 filing fee from the landlords.

Authorization to made deduction from rent

By way of this decision I have awarded the tenant the sum of \$200.00 for loss of quiet enjoyment and recovery of the filing fee. I authorize the tenant to satisfy this award by making a one-time deduction of \$200.00 from a subsequent month's rent and in doing so the landlords must consider the rent to be paid in full.

Conclusion

The Two Month Notice is cancelled and the tenancy continues at this time.

The tenant is awarded \$100.00 for the landlord's unlawful entry in the rental unit and his claim for recovery of repair and replacement cost of his laptop and EarPods is dismissed without leave.

The balance of the remedies sought by the tenant in this application were severed and dismissed, with leave.

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: April 05, 2023

Residential Tenancy Branch