



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKYLARK REALTY INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL

### 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 ("2 Month Notice") pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their affirmed testimony, and to make submissions. The tenant confirmed receipt of the landlord's 2 Month Notice to the tenant posted on the tenant's door February 25, 2017. The tenant applied to cancel the Notice.

The landlord confirmed receipt of the tenant's Application for Dispute Resolution including documentary evidence and Notice of this hearing. The tenant included in his evidence a copy of a previous decision with respect to this tenancy. The landlord indicated that the tenant did not provide him with a copy of this previous Residential Tenancy Branch decision regarding this tenancy with his materials however the landlord's representative (property manager) confirmed that the landlord had received his own copy of the previous decision. The landlord did not submit any documentary evidence for this hearing. The landlord's representative testified that the landlord was prepared to proceed with this matter.

### Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy be cancelled or is the landlord entitled to an Order of Possession?

### Background and Evidence

This tenancy began on February 1, 2017. There is no written tenancy agreement between the parties however, the parties agreed that a monthly rental amount of \$800.00 is due on the first of each month. The landlord continues to hold a \$400.00 security deposit paid by the tenant at the outset of the tenancy. The tenant continues to reside in the rental unit and has applied to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use.

On February 25, 2018, the landlord posted a 2 Month Notice on the tenant's door. The landlord relied on the ground that a close family member, as defined by the Act, will reside in the rental unit. The landlord testified that his mother (who currently lives in the upstairs unit with the landlord's family) will move into the downstairs rental unit. The landlord testified that his mom had a fall recently and he is worried about her climbing stairs daily. The landlord did not submit any documentary evidence for this hearing.

The tenant testified that the landlord has attempted to increase his rent several times and that the landlord has also issued previous notices to end this tenancy. The tenant applied to dispute the landlord's 2 Month Notice on March 9, 2018. The tenant referred to two previous notices issued to the tenant by the landlord. He provided a copy of the previous dispute resolution decision where the landlord's previous 1 Month Notice to End Tenancy for Cause (alleging several grounds for Cause) and the 10 Day Notice to End Tenancy for Unpaid Rent were cancelled.

The tenant argued that it is very suspicious that the landlord has issued three previous Notices to End Tenancy. The tenant also submitted that he believes the landlord's real motive is to be able to increase the rent substantially. He testified that the landlord repeatedly threatens to end his tenancy if he does not pay higher monthly rent.

A copy of the 2 Month Notice issued on February 25, 2018 by the landlord to the tenant was submitted into evidence for this hearing. The 2 Month Notice required the tenants to end this tenancy by May 1, 2018. The landlord cited the following reasons for the issuance of the Notice:

*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse*

The landlord's property manager attended this hearing and stated that the landlord understands the consequences of failing to act in accordance with his 2 Month Notice issued to the tenant. The landlord testified that the landlord's mother is moving into the lower unit however he did not provide documentary evidence for this hearing. The tenant argued that the mother seems to get around fine and that she currently resides in the upper portion of the rental unit.

The tenant and his advocate submitted that, beyond the issuance of several notices to end tenancy, the landlord has threatened the tenant. The tenant testified that he has contacted the police regarding these threats however the tenant did not submit any documentation with respect to charges against the landlord. The tenant did submit a police officer's card with 2 incident numbers but no further details.

The tenant's advocate submitted that the tenant has provided an ulterior motive to end the tenancy and that therefore the landlord is required to prove that he is acting in good faith in issuing his 2 Month Notice: that he intends that his close family member (his mother) to move into the rental unit.

### Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 2 Month Notice to End Tenancy on February 25, 2018, the landlord claimed that; a close family member will move into the rental unit.

Section 49 of the Act with respect to an end to a tenancy for Landlord's Use reads as follows,

**49** (1) In this section:

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

...

(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.

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under

subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

The landlord issued the correct form – a 2 Month Notice – and provided the correct detail required by the form with respect to the reason to end the tenancy. In the previous decision addressing the landlord's previous notices issued to end this tenancy (for reasons including unpaid rent and repeated late payment of rent as grounds), the arbitrator found that the landlord has provided insufficient particulars to allow the tenant to respond to the notices. In the previous decision, the arbitrator wrote that "one of the principles of natural justices is that a party to a dispute has the right to know the specifics of the allegations made against them". In the case of the previous hearing, the landlord had failed to provide the Tenant with sufficient information as to the reasons the 1 Month Notice was issued and had failed to meet his burden of proof with respect to the 10 Day Notice.

Pursuant to Residential Tenancy Policy Guideline No. 2 regarding ending a tenancy for landlord's use discussed the good faith requirement (or honest intent) under this type of notice,

*... Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found 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...*

When a tenant raises the issue that a landlord may have an ulterior motive for the eviction, the onus falls to the landlord to prove that they are acting in good faith in issuing a 2 Month Notice to End Tenancy for Landlord's Use relying on the ground that the rental unit will be occupied by a close family member.

I find that the tenants' evidence created a rebuttable presumption: the tenant supplied evidence showing that the landlord had an ulterior motive to end this tenancy. Furthermore, I accept the tenant's testimony over the landlords as the tenant provided detail, some undisputed testimony and some corroborating evidence in the form of the police information, the undisputed testimony with respect to the police as well as the previous recent notices issued by the landlord. I find that the landlord has failed to rebut

the evidence of the tenants provided for this hearing: the landlord did not provide sufficient evidence to prove on a balance of probabilities that he was acting in good faith in issuing a 2 Month Notice to End Tenancy for Landlord's Use. The landlord did not supply evidence, beyond his own testimony that his mother will move into the rental unit.

Therefore, I find that the landlord did not issue the 2 Month Notice to End Tenancy in good faith and I grant the tenants' application to cancel the 2 Month Notice.

### Conclusion

I grant the tenant's application to cancel the 2 Month Notice to End Tenancy dated February 25, 2018. The tenancy shall continue.

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 11, 2018

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Residential Tenancy Branch