



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF CNL MT RP

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy pursuant to section 49 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*;
- an Order directing the landlord to make repairs to the unit or site pursuant to section 65 of the *Act*; and
- more time to dispute the notice to end tenancy pursuant to section 66 of the *Act*.

This hearing was a continuation of a hearing first heard and adjourned on March 29, 2018. The original hearing lasted 180 minutes, while the June 12, 2018 hearing lasted 100 minutes.

Both the tenants and the landlord attended the hearing. The landlord was represented at the hearing by his counsel, C.S., with witnesses Y.L.L. and Y.T.L. also attending the hearing. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

### Background and Evidence

Undisputed testimony was presented at the hearing that this tenancy began October 15, 2015. Rent was \$933.00 per month, and a security deposit of \$425.00 paid at the outset of the tenancy, continues to be held by the landlord.

The tenants were served with two separate 2 Month Notices to End Tenancy. The first dated December 15, 2017 was withdrawn by the landlord. The second 2 Month Notice was dated February 15, 2018. On both notices, the reason cited by the landlord for their issuance was listed as follows:

*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)*

During the hearing, the landlord explained that he sought to have access to the entirety of the rental premises because his step-children had recently immigrated to Canada from Hong Kong. As part of his evidentiary package, the landlord provided copies of their confirmation of permanent residence issued by the Government of Canada.

The landlord said that the two step-children (19 and 16 years old) currently share the upstairs portion of the home with himself and his wife. One child has her own bedroom, while the other child sleeps in a computer room. The landlord said that the relationship between himself and his step-children had become difficult because of the tight quarters that the parties shared, with the step-children presently completing their homework in the living room. The landlord said that the step-children were both currently enrolled in school and that they required use of the suite so that they had a quiet area to study, could freely watch television and play on their computers, and live a life separate from their parents.

The tenant questioned the good faith associated with the issuance of the 2 Month Notice and argued that the landlord's past behaviour indicated that he did not intend to use the rental unit as stated on the 2 Month Notice. In support of his position, the tenant presented lengthy oral submissions and cited *Gichuru v. Palmar Properties Inc. (2011) BCSC 827* which held that "the landlord did not have good faith intentions to occupy the rented premises. Instead, the notice to vacate for reason of the landlord's intent to occupy the premises had only been given for the purpose of getting rid of what the landlord considered to be a 'problem tenant.' "

The past actions which the tenant sought to link to evidence of the landlord's bad faith included an instance of the landlord telling the tenants that he was not charging them enough rent, a refusal to provide the tenants with appropriately sized garbage bins, and an overall animosity between parties as illustrated by a series of emails that were exchanged between the parties and submitted in evidence.

The landlord disagreed that the parties had a poor relationship and provided a detailed timeline of the permanent residence application process that he had recently completed with his step-children. The landlord said that the issues cited by the tenant related to the smaller garbage bin had been addressed and attributed to his past communication issues with the tenants as being a result of his poor English language skills and because of cultural differences.

During the hearing, the landlord's two step-children were called as witnesses. Both step-children, through a translator, described the problems they encountered living in the upstairs portion of the home with their parents and both step-children explained that they had been told by their parents that they would be able to occupy the bottom floor suite when they moved to Canada. Following questioning of the witnesses, the tenant stated that discrepancies had been raised between the testimony of the witnesses and that of the landlord. He argued that this indicated the landlord's true motivation for the issuance of the 2 Month Notice was not to house the children but to remove him from the property.

### Analysis

Subsection 49(3) of the Act states that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*A claim of good faith requires honesty of intention with no ulterior motive...*

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.*

This two part test requires landlords to demonstrate that (i) they truly intend to use the premises for the purposes stated on the notice to end the tenancy and (ii) they must *not* have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

The landlord explained at the hearing that his two step-children, aged 16 and 19 had recently been granted their Permanent Residence status in Canada and were now living with him and his wife on the main floor of their home. The landlord said that he issued a 2 Month Notice to End Tenancy for Landlord's Use of Property because he intended for these children to occupy the two bedroom rental suite presently occupied by the tenants. Following a review of the evidence submitted by the landlord containing the Confirmation of Permanent Residence documents issued to his children on November 7, 2017 and after having considered the oral testimony of both parties, I find it indisputable that the landlord intends to have his two school aged step-children occupy the rental unit. Over the course of both hearings, the tenant did not dispute that the landlord's step-children were presently sharing the upstairs portion of the home with the landlord and his wife, but instead sought to establish that the landlord's true motivation for the issuance of the 2 Month Notice was a lack of good faith and that the step-children and the parents could continue to all live together as a unit in the upstairs portion of the home.

The tenant argued that the true intention of the landlord was to remove him and his family from the rental unit because of an acrimonious relationship that had developed between the parties throughout the tenancy. The tenant said that he suspected that the landlord's family would be able to co-exist in the upstairs unit without issue and attempted to connect a discrepancy in the landlord's testimony with that of the witnesses. I do not accept the tenant's argument. The minor discrepancies which surfaced between the testimony of the witnesses and that of the landlord did not clearly indicate that the landlord had an ulterior motive for the issuance of the 2 month notice. The tenant said that the landlord's past actions were evidence of the landlord's primary motive for ending the tenancy, and the tenant cited submitted case law to demonstrate that a landlord cannot end a tenancy if it is found that they do not have "good faith" for doing so.

After having reviewed all of the evidence submitted to the hearing by both parties, and specifically after having considered the tenants' written submissions and the accompanying case law presented by them, I find that the tenants have failed to demonstrate that the landlord did not act in good faith with issuing the 2 Month Notice to End Tenancy. There is no question that the landlord's two step-children have recently immigrated to Canada from Hong Kong and are presently sharing the main floor of the rental home with the landlord and his wife. Additionally, little evidence other than unsubstantiated testimony from the tenant was provided alleging that the landlord had an intention to use the rental unit for any other reason, other than to house his two step-

children. I find that the landlord established that he did not have a have a dishonest or ulterior motive for seeking to have the tenants move out of the residential premises and I do not accept the tenants' argument that the landlord's past actions were an indication of his true motivations. The landlord was able to provide specific, detailed and accurate submissions regarding the steps he had taken to bring his children to Canada from Hong Kong, and he presented a very detailed timeline on his own rental history, and his accompanying personal life.

The tenant sought to rely on the decision reached in *Gichuru v. Palmar Properties Inc.* (2011) BCSC 827 which examined the good faith requirement of a 2 Month Notice. This matter contained a very different set of circumstances than those presently before me and the original decision was overturned on judicial review by the British Columbia Supreme Court because the arbitrator's decision was found to be patently unreasonable. In *Gichuru v. Palmar Properties Inc.* (2011) BCSC 827 the tenant had previously filed a Human Rights Tribunal complaint against the landlord, and relations between the parties were described in the Judge's decision as "troubled and acrimonious", with the tenant having repeatedly complained to the landlord about noise. Additionally, the landlord refused to occupy another vacant suite that was available at the time he issued the 2 Month Notice to the tenant. I find little evidence that the parties before me experienced a breakdown in their relationship as severe as those described in the *Gichuru* case, and I am satisfied that the landlord does truly intend to use the rental unit as described in the 2 Month Notice to End Tenancy.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

After reviewing the evidence submitted to the hearing by both parties, I find that the 2 Month Notice dated February 15, 2018 which was disputed by the tenants to be valid.

Based on my decision to dismiss the tenants' application for dispute resolution and my finding that the landlord's 2 Month Notice complies with section 52 of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, April 30, 2018.

This tenancy shall end on June 30, 2018, the final day for which the tenant has paid rent. The tenants must bear the cost of their own filing fee. As the tenants are entitled to compensation under section 51, the landlord is directed to provide them with an amount that is equivalent of one month's rent payable under the tenancy agreement, if he has not already done so.

### Conclusion

The tenants were unsuccessful in their application to cancel the landlord's 2 Month Notice to End Tenancy. I am granting the landlord an Order of Possession to be effective at 1:00 P.M. on June 30, 2018. If the tenants do not vacate the rental unit by 1:00 P.M. on June 30, 2018, the landlord may enforce this Order in the Supreme Court of British Columbia.

The remainder of the tenants' application is dismissed. The tenants must bear the cost of their own filing fee.

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 20, 2018

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Residential Tenancy Branch