



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FFT

### Introduction

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

- Cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) pursuant to section 49 of the *Act*, and
- Reimbursement of the filing fee pursuant to section 72 of the *Act*.

ST, advocate, appeared with the tenant ("the tenant"). The landlord attended with WL, lawyer, and PL, agent ("the landlord"). Both parties had a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord acknowledged receipt of the Notice of Hearing and Application for Dispute Resolution. The tenant acknowledged receipt of the landlord's materials. Neither party raised issues of service. I find each party served the other in accordance with the *Act*.

At the outset, the parties agreed to amend the landlord's name to remove the name of PL who throughout was acting as an agent of the landlord only.

### Issue(s) to be Decided

Is the tenant entitled to:

- Cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) pursuant to section 49 of the *Act*, and
- Reimbursement of the filing fee pursuant to section 72 of the *Act*.

### Background and Evidence

The parties agreed they entered into a tenancy agreement in July 2015 which is ongoing. Rent was \$1,560.00 a month payable on the first of the month. At the beginning of the tenancy, the tenant paid a security deposit of \$750.00 which the landlord holds. The tenant paid rent regularly and on time. The tenancy is currently month to month. There are no arrears of rent. The parties filed a copy of the tenancy agreement.

The parties agreed their relationship was acrimonious and continues to be so. The tenant testified it has been a “battle over repairs and rent increases”. The parties agreed that an arbitrator submitted a Decision dated November 13, 2018. The tenant submitted a copy of the Decision. (Reference to the file # appears on the cover page herein.)

The previous Decision concerned applications and cross-applications between the parties on multiple issues and conflicts surrounding the subject unit, some of which involved police presence. The arbitrator had issued an interim order for repairs. The hearing occupied more than 6 hours over four hearing dates. The decision awarded the tenant a monetary order.

The parties agreed the landlord issued the Two Month Notice dated December 14, 2018 and served the tenant on December 16, 2018, approximately one month after the previous Decision (issued November 13, 2018). The effective date of the Two Month Notice was February 28, 2019. A copy of the Notice was submitted as evidence which is in a Residential Tenancy Branch approved form. The tenant filed an application to dispute the Two Month Notice on December 27, 2018 within 15 days.

The Two Month Notice stated the following reasons for the issuance of the notice:

*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).*

The landlord submitted into evidence a written statement summarizing her reasons for ending the tenancy and deciding to move in to the unit. She testified that she intended to live in the unit starting in March 2019 when she returned to Vancouver from China to continue her studies. She submitted information from the school confirming her

enrolment. The landlord testified her reasons included her daughter leaving home, so that she requires a smaller living space; further, the landlord rented another property she owns in Vancouver to someone else, so that it is unavailable for her to live in when she returns to Canada. The landlord's daughter submitted a written statement which included the daughter's intentions to return to Vancouver and live with her mother from time to time in the unit. The landlord submitted evidence of a booking for a flight from China to Vancouver in time to occupy the unit after the tenant vacated. However, the tenant learned that the booking had expired without being purchased and informed the landlord of this fact; the landlord subsequently purchased airfare. The landlord submitted a copy of this ticket in support of her claim that she intended to return to Canada to occupy the unit when the tenant vacated. The landlord stated that the purchase of airfare is evidence of her intention to return to Canada and occupy the unit. The tenant stated the failure to purchase a ticket at the time the Two Month Notice was served indicates the landlord was not committed to returning to Canada to live in the unit.

The tenant testified that relations between the parties continued to be acrimonious after the previous Decision. The tenant believed that the issuance of the Two Month Notice in little more than four weeks after the previous Decision was not in good faith but was part of a deliberate plan to force the tenant to leave. The tenant claims the landlord had an ulterior motive, that is, to force the tenant to move against her will as retribution for getting a monetary and repair order.

The landlord confirmed understanding of the requirement of section 51(1) of the *Act* to provide the tenant with the equivalent of one month's rent payable under the tenancy agreement because the landlord issued the Two Month Notice to the tenant. As such, the landlord allowed the tenant to forego the rent payment for the month of February 2019 in satisfaction of this compensation requirement.

### Analysis

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. The tenant submitted an index binder of materials. The landlord submitted substantial documentary evidence. Each party made lengthy oral submissions. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Pursuant to Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the landlord has the onus to prove the grounds for the Two Month Notice. The standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as she issued the Notice and is seeking to end the tenancy.

Section 49(3) of the *Act* allows a landlord to end a tenancy for their own use:

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)**

As the landlord issued the Notice under section 49(3) of the *Act*, the tenant had 15 days to dispute the Notice pursuant to section 49(8)(a) of the *Act*. There is no issue that the tenant filed the Application within the 15-day time limit set out in the *Act*.

*Residential Tenancy Policy Guideline #2 - Ending a Tenancy: Landlord's Use of Property* explains the 'good faith' requirement in section 49(3) of the *Act* and states in part at page two to three:

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 the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

A landlord can establish that they truly intend to do what they said on the notice to end tenancy by providing evidence in support of their intention. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy, other than for the reasons stated on the notice to end tenancy.

As explained in Policy Guideline 2, when the good faith intention of a landlord's notice to end tenancy for landlord's use is called into question, the landlord must satisfy the elements of two tests, on a balance of probabilities, as follows:

- 1) That they truly intend to do what they said on the notice to end tenancy; and
- 2) That they do not have another purpose or an ulterior motive for ending the tenancy

I find the landlord has failed to meet the standard of proof required with respect to both aspects of the test. I find it challenging that the landlord acknowledged that the purchase of an air ticket to return to Canada to occupy the unit was made only after the tenant notified the landlord that the tenant learned the landlord did not have a purchased ticket, but only an expired booking.

As well, I find the landlord had not established that she does "not have another purpose or an ulterior motive for ending the tenancy". I find it particularly challenging for the landlord given that she issued the current Two Month Notice about four weeks after receiving the previous arbitration Decision which had resulted in an order for a monetary award and repair order against the landlord. Although the landlord testified that she had considered moving into the unit for many months, I find the previous Decision is the likely reason for the issuance of the Notice. I find the landlord has another purpose or an ulterior motive for ending the tenancy based on a history of ongoing animosity and conflict with the tenant.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord has not provided sufficient evidence to establish that she intended, in good faith, to do what she stated in the Two Month

Notice and to establish that she does not have another purpose or an ulterior motive for ending the tenancy.

As such, the landlord's Two Month Notice dated December 14, 2018 is cancelled. The tenancy will continue until ended in accordance with the *Act*.

As the tenant has been successful in this application, I grant the tenant reimbursement of the filing fee in the amount of \$100.00. In satisfaction of this award, I direct the tenant may deduct this amount from the rental payment on a one-time basis only.

### Conclusion

The tenant's application to cancel the Two Month Notice dated December 14, 2018 is granted.

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: February 06, 2019

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Residential Tenancy Branch