



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "*Act*") for an order for the cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use (the "Two Month Notice") and reimbursement of the filing fee.

Both parties attended the hearing and had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlords acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution and both parties acknowledged receipt of each other's evidence. Neither party raised issues of service. I find that the parties were served in accordance with the *Act*.

The tenant acknowledged that the landlord's Two Month Notice was posted on his door on December 26, 2018. I find that the tenant is deemed to have been served the Two Month Notice on December 29, 2018 in accordance with sections 88 and 90 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to an order for cancellation of the landlord's Two Month Notice pursuant to section 49 of the *Act*?

Is the tenant entitled to recover his filing fee for this application from the landlord pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The parties agreed that the tenancy started on January 1, 2011. The tenancy agreement stated a monthly rent payment of \$1,600.00 with a \$800.00 security deposit paid at the outset of the tenancy held by the landlord. A copy of the tenancy agreement was provided.

The landlord testified that he purchased the property in 1982 and he rented the property out until 1984. The landlord testified that he moved into the property in 1984 and he resided there until 2010. The landlord testified that he then performed a substantial renovation of the property and he moved into his brother's property where he still resides. The landlord testified that he then rented the property to the tenant and the landlord has been continuously residing in his brother's property.

The landlord testified that his brother's property is a detached house with two separate living units. The landlord testified that there are three bedrooms and a kitchen upstairs where his brother's family resides. The landlord testified that he lives in the lower level of the house with his family. The landlord testified that the lower level has two bedrooms and a storage room which they have converted to a small bedroom. The landlord testified that the lower level also has a kitchen. The landlord his wife and his two sons live with him in the lower level.

The landlord testified that he intends to move back into the rental unit because one of his sons is getting married in July 2019. The landlord testified that his son's fiancé will live with his family after the marriage. The landlord testified that his brother has told him that he does not have room in his house for additional family members so the landlord needs to move. Both of the landlord's sons testified and corroborated the landlord's testimony. The landlord also produced corroborating affidavits from his brother and his sons.

The landlord issued the Two Month Notice on December 26, 2018. The stated purpose for the Two Month Notice was that the landlord, or the landlord's close family, intended to move into the rental unit. The stated move out date on the Two Month Notice was February 28, 2019.

The tenant questioned the landlord's motivations for issuing the Two Months Notice. The tenant testified that the landlord had previously issued a two month notice for landlord's use last year and that notice was cancelled in a Residential Tenancy Branch

hearing in August 2019. The tenant submitted a copy of the previous arbitration decision.

In the previous case, the arbitrator ruled that the landlord did not provide sufficient evidence to prove his stated intention of moving into the rental unit. The tenant argued that the landlord should not be permitted to issue another two month notice for landlord's use after his previous notice was cancelled.

The tenant argued that the Two Month Notice was another attempt by the landlord to retaliate against the tenant relating to a dispute over a requested rent increase last year.

The tenant also argued that the landlord has little credibility because the landlord testified that he moved out of the rental unit in 2010 but the tenant argues that this is inaccurate because the tenant states that he has lived in the rental unit for over ten years.

The tenant also testified that the landlord did not need to move into the rental unit because the landlord owns other rental properties under his company.

The tenant also testified that the landlord has previously demanded illegal rent increases.

### Analysis

Section 49(3) of the *Act* permits a landlord to end a tenancy "...if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

*Residential Tenancy Policy Guideline* No. 2 explains the good faith requirement in Section 49(3) of the *Act* as follows:

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.

Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:

- a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));
- a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

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 that they do not have another purpose or an ulterior establish motive for ending the tenancy.

In this matter, the tenant claimed that he had doubts about the good faith intentions of the landlord based upon the dispute history of the parties. Specifically, the tenant claimed that this notice was an attempt by the landlord to relitigate the previous notice which was cancelled six months ago. I find that the landlord's issuance of this Two Month Notice only six months after the last notice was cancelled does raise an issue regarding the genuine intentions of the landlord. Accordingly, pursuant to *Residential Tenancy Branch Policy Guideline # 2*, the landlord must prove that he truly intends to occupy the rental unit and that he does not have an ulterior motive for issuing this notice.

In this matter, the landlord has provided significant evidence that he does intend to move into the rental unit with his family. I find the landlord's explanation that he needs to move into a larger dwelling to accommodate his growing family, especially in light of the

upcoming wedding, to be credible. Furthermore, the landlord has corroborated this explanation with testimony from his sons and supporting affidavits. I find that the landlord has provided sufficient evidence to establish that he truly intends to move into the rental unit and that he does not have an ulterior motive.

The tenant argued that the landlord should not be permitted to issue a new two month notice after the landlord's previous notice was cancelled by an arbitrator. The legal principle of *res judicata* does prevent a party from litigating a matter that has already been adjudicated between the same parties. However, in this matter the landlord has issued a new two month notice and the landlord has provided evidence to establish that the new two month notice is based upon different facts than the previous two month notice dated April 15, 2018. Accordingly, I find that *res judicata* does not apply to this application.

The tenant also argued that the landlord should be found to have little credibility because of the landlord's testimony related to the length of tenancy. I find that any potential minor discrepancy in this detail is not a significant factor in weighing the landlord's testimony. Furthermore, I note that the dates on the tenancy agreement actually corroborate the landlord's testimony, not the tenant's testimony.

Furthermore, I find that it is irrelevant whether the landlord, or his company, owns other rental properties. Section 49(3) of the *Act* permits the landlord to 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. If the landlord has a good faith intention to move into the rental unit it is irrelevant if the landlord has other residential options.

I find that the landlord has provided sufficient evidence to establish that he issued the Two Month Notice with a good faith intention to occupy the rental unit. Accordingly, I uphold the Two Month Notice and I deny the tenant's application to cancel the Two Month Notice.

Pursuant to section 55(1), when a notice to end tenancy is upheld, I must grant the landlord an order of possession for the rental unit if the landlord's notice to end tenancy complies with section 52. I find that the form and content of the Two Month Notice complies with section of the *Act*. I therefore grant the landlord an order of possession effective on February 28, 2019 at 1:00 p.m.

Since the tenant has not prevailed in this matter, I dismiss the tenant's request for reimbursement of his filing fee.

No information was provided to the hearing related to payment rent for February 2019. The parties are reminded that, pursuant to section 51 of the *Act*, a tenant who receives a notice to end a tenancy for landlord's use of the property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Conclusion

I find the landlord is entitled to an order of possession effective **February 28, 2019 at 1:00 pm**. This order must be served on the tenants. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I dismiss the tenant's request for reimbursement of his 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: February 25, 2019

---

Residential Tenancy Branch