



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0918788 BC LTD  
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 of Property ("2 Month Notice"), pursuant to section 49.

HB ("landlord") represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. Neither party submitted any written evidence for this hearing.

As the tenant confirmed receipt of the 2 Month Notice on April 24, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

### **Preliminary Issue: Adjournment of Hearing**

At the outset, the tenant made an application requesting an adjournment as the tenant suffers from mental health issues, and her advocate was unable to attend the hearing.

The landlord opposed the application for an adjournment stating that the matter had been outstanding for since April of 2019, and both parties had ample opportunity to prepare for the hearing. The landlord testified that he was ready to proceed, and that an adjournment would be prejudicial to him.

Rule 6 of the Residential Tenancy Branch Rules of Procedure state that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing". While the tenant testified that he had been out of town for approximately one week, he had not taken

steps to attempt to adjourn this proceeding beforehand. Nor did the tenant have an agent attend to either explain why he could not attend or represent him at the hearing, subject to Rule 6.

The criteria provided for granting an adjournment, under Rule 6.4 are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

Although I accept the tenant's testimony that she suffers from mental health issues, the tenant did not provide information about why her advocate was not in attendance. The matter has been outstanding since May 9, 2019 when the tenant filed her application. The tenant testified that she thought there would be a resolution of the matter before the hearing date.

I am not satisfied that an adjournment would contribute to a resolution of this matter. I find that the tenant was able to understand my questions, and was able to participate in the hearing. As this matter pertains to a notice to end tenancy, and as the landlord's agent was ready to proceed, I find the landlord would be significantly prejudiced by a delay in this matter by adjourning the hearing.

The request for an adjournment was not granted. The hearing proceeded.

### **Issues to be Decided**

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### **Background and Evidence**

This tenancy began on August 1, 2016. Monthly rent is currently set at \$750.00, payable on the first of the month. Both parties confirmed that the rent was originally set a higher amount, but has been reduced by consent of both parties. The landlord testified that the tenancy agreement indicates a security deposit was to be paid in the amount of \$400.00, although it is disputed about whether this money was ever paid.

The landlord issued the 2 Month Notice dated April 24, 2019, with an effective move-out date of June 30, 2019, for the following reason:

"The landlord that is a family corporation, and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

The landlord provided the following submissions for why they issued the 2 Month Notice. The landlord issued the 2 Month Notice as the landlord is a corporation owned by 4 persons. One of the owner's sons intends to move into the rental unit.

The tenant is disputing the good faith of the landlord in issuing the 2 Month Notice. The tenant questions why her specific rental unit was chosen, considering the number of units the landlord owns, and the fact that another unit was vacant when the 2 Month Notice was issued to her. The landlord testified that no other vacant rental units available. The tenant also believes that the landlord wishes to end this tenancy for financial reasons.

### **Analysis**

Subsection 49(4) of the *Act* sets out that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit, which is the reason for why the landlord issued the 2 Month Notice. The tenant disputes this notice, citing that the landlord did not issue the Notice in good faith.

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

*"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."*

Although the landlord stated that they had issued the 2 Month Notice in order for one of the owner's sons to occupy the suite, I find that the tenant has raised doubt as to the true intent of the landlord in issuing this notice. The onus is on the landlord to support that the 2 Month Notice is valid, and issued in good faith. I am not satisfied that the landlord has met the burden of proof to demonstrate that there is no ulterior motive for the issuance of this 2 Month Notice.

Furthermore, Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

As a copy of the 2 Month Notice was not provided for this hearing by either party, I am unable to verify that the Notice complies with the requirements of section 52 of the *Act*. For these reasons, I allow the tenant's application to cancel the 2 Month Notice. I therefore allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice dated April 24, 2019 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

**Conclusion**

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated April 24, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 21, 2019

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Residential Tenancy Branch