



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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 Landlords Use of Property (the 2 Month Notice) pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by his son. The landlord's agent acknowledged receipt of the tenants' evidence. The landlord did not submit any documentary evidence for this hearing other than the notice to end tenancy which the tenant confirmed that he received.

### Issue(s) 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

The landlord gave the following testimony. This month to month tenancy began 7 or 8 years ago. The current monthly rent is \$468.00. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on June 28, 2019 for the following reason:

- *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 who is the owner of this property testified that he is going to move into the home as he is having issues living with his parents. The landlord testified that the subject room is the largest room in the home and he will set up his office to the next adjacent room. The landlord testified that he has issued the notice in good faith without any ulterior motive.

KF made the following written submissions.

*That the Landlord has an ulterior motive for evicting the Tenant can be established by examining:*

- i) that the Landlord previously attempted to evict multiple tenants from the Rental Property on the basis that the City Order required them to do so, despite previous RTB decisions and instructions from the City of Vancouver stating otherwise; and*
- ii) that the relationship between the Landlord and the Tenant is frayed, and the Landlord has demonstrated animosity towards the Tenant.*

*That the Landlord lacks good faith intentions for evicting the Tenant can be established by examining:*

- iii) that the Rental Property is in a state that does not comply with the law and is not suitable for occupation; and*
- iv) that the Landlord owns comparable rental units they could occupy instead of the one in question.*

KF submits that the totality of the above clearly illuminates the landlords desire to end the tenancy for an ulterior motive and that at no time the landlord has demonstrated good faith. KF submits that the property is unsuitable for occupation as it has been run down and lacked the attention required to maintain it in a safe and sanitary condition. KF submits that the notice should be cancelled.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, and witness JS, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my finding are set out below.

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

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the “good faith requirement” as follows.

*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.*

Throughout the hearing, the landlord did not want to talk about the previous notices or the other issues in the tenancy, despite the fact that the tenant raised the issues. The landlord confirmed that there is at least 3 other possible units that could be occupied in the home. The landlord testified that the subject unit was the largest; however, he did not provide supporting evidence. Despite the advocate providing written submissions and again orally at the hearing as to the grounds the tenant was challenging the notice, the landlord simply replied that he wants to move in and doesn't want his rights violated. The landlord did not directly address or dispute the arguments made by the tenants advocate.

I find that the landlord had a number of ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons as explained above. Based on the above and on a balance of probabilities, I find that the landlord has not provided sufficient evidence to support the notice or to end the tenancy, accordingly; the notice to end tenancy is cancelled.

### Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated June 28, 2019, is cancelled and of no force or effect. The tenancy continues.

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: August 12, 2019

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Residential Tenancy Branch