



# 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 Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49.

The tenant attended the hearing. The landlord attended the hearing and was represented by an advocate ("**LH**"). Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with his evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### **Issue(s) to be Decided**

Is the tenant entitled to an order cancelling the Notice?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into an oral tenancy agreement starting April 1, 2019. The rental unit is the basement suite of a single detached home owned by the landlord, who

occupies the upper level. The length of the tenancy agreement was a point of contention. The landlord testified that the term was to be three months (ending June 31, 2019), whereas the tenant stated that he did not accept that date as the end to the tenancy. He acknowledged that when he entered into the tenancy agreement the landlord told him the term would be three months, but testified that, due to his life circumstances, he would have agreed to anything at that point.

The parties agree that monthly rent is \$700 and that the landlord did not require a security or pet damage deposit to be paid.

The parties testified that they were in a romantic relationship for the six years prior to the start of the tenancy. When the parties separated, the landlord testified she agreed to rent the rental unit to the tenant for three months to allow him some time to find a new place to live and get his life in order.

The tenant testified that he is doing just that. He testified he has enrolled in night classes and expects to graduate in July 2020. He testified that he has taken out a loan to pay for school and expects to be able to find a job in his field upon graduation.

On August 27, 2019, the landlord served the Notice on the tenant by posting it on his door. The Notice stated the reason for its issuance as "the rental unit will be occupied by the landlord or the landlord's close family member".

The landlord testified that she wishes to have her basement back so she can use it for her own purposes. LH stated that, prior to renting it to the tenant, the basement suite was last rented out in 2006. He stated that the tenant paid off her mortgage in 2010 and does not need to rent the basement suite to make ends meet.

LH referred to a written statement provided to the tenant and the Residential Tenancy Branch in advance of this hearing in which he wrote:

Previous to the current tenant the basement was used as a guestroom, when [the landlord's] daughter and her family would visit [the landlord] and for some time, also as her son's residence from November 2006 to the summer of 2012. [The landlord] plans to use the basement in a similar fashion to this going forward, perhaps with the addition of turning it into a yoga or home cinema room, for when close family is not visiting. [The landlord] has no intention of renting the basement out to anyone and is acting in good faith that the place will only be used for her personal use going forward.

At the hearing, the tenant did not suggest that the landlord failed to act in good faith when issuing the Notice. Rather, his submissions focused on his own financial circumstances, and how an eviction would affect him personally. He testified that his “reason for rejecting the Notice is [his] ability to sustain a life elsewhere” and that his “ability to move out and sustain a reasonable lifestyle is very limited.”

LH stated that the landlord is not unsympathetic to the tenants’ situation but argued that the tenant’s well-being is not the landlord’s responsibility. He argued that the bases for cancelling the Notice advanced by the tenants are not sufficient to “preclude the ending of the tenancy” and that the tenant’s financial situation is not applicable in determining if the Notice is valid.

LH argued that Policy Guideline 2A is directly applicable to the present situation. The relevant portion states:

**Reclaiming a rental unit as living space**

If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.

LH stated that, in light of the tenant’s circumstances, if the landlord is successful in opposing the tenant’s application, she would be willing to allow the tenant to remain in the rental unit until the end of November 2019.

In his application for dispute resolution, the tenant suggested the Notice was not issued in good faith. However, as stated above, he did not make any submissions on this point at the hearing. The landlord therefore did not have an opportunity to make submissions on those points. As such, I will not recount the specifics of the tenant’s allegations denying the landlord’s good faith contained in his application for dispute resolution.

## **Analysis**

Section 49(3) of the Act states:

### **Landlord's notice: landlord's use of property**

49(3) 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.

“Good faith” is discussed in Policy Guideline 2A, which refers to the case of *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827, in which the BC Supreme Court, relying on prior case law, found, at paragraph 56, that “good faith applies to both the intention to occupy and the purposes for which the intention is held” and, at paragraph 57, that good faith is equated “with honesty, and with the absence of dishonesty, malice, deception, or pretence.”

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Additionally, Policy Guideline 2A considers who bears the onus to prove whether a landlord acted in good faith. It relies on *Baumann v Aarti Investments Ltd.*, 2018 BCSC 636 for the proposition that the landlord bears the onus to show that a notice to end tenancy for landlord's use was issued in good faith. At paragraph 34, the court in *Baumann* states:

[34] [...] In *Gallupe v. Birch* [citation omitted] the Court held that when the issue of an ulterior motive or purpose for an eviction notice is raised (and it clearly was here) this “... places an onus upon the landlord to prove an absence of bad faith

arising out of dishonest purpose as opposed to placing upon the tenant an obligation to prove the existence of some element of bad faith”.

So, the landlord bears the onus to prove it is more likely than not that she intends to occupy the rental unit, and that the Notice was issued “with the absence of dishonesty, malice, deception, or pretence”.

#### 1. Good Faith and Use of Rental Unit

I find that the landlord acted in good faith when issuing the Notice. I find that it is more likely than not that the sole motivating factor in issuing the Notice was the landlord’s intention to reclaim the rental unit as part of her living space. I do not find that she had any dishonest purpose or ulterior motive in issuing the Notice. In coming to this conclusion, I rely on the fact that the rental unit formed part of the landlord’s living space in the years prior to the tenancy agreement being entered into and was not rented out since 2006.

I also rely on the undisputed fact that, at the time she offered to rent the basement suite out to the tenant, she told him it would be for three months only. While I acknowledge that the tenant may not have been happy with this offer, and that he felt he had no choice but to accept this condition, I do not find that he misapprehended the landlord’s condition that the tenancy be for three months only. He was not forced or coerced by the landlord to enter into the tenancy agreement, and, had he stated at the start of the tenancy that the length of the rental should be for a longer (or indefinite) term, I am unsure if the landlord would have agreed to let the tenant reside in the rental unit.

I understand that the tenant does not now agree that the tenancy agreement should be for a three-month term. However, this does not change the fact that, at the start of the tenancy, the landlord intended, at the tenant understood, that the tenant was to be for a term of three months.

I agree with LH that Policy Guideline 2A is directly applicable to the present situation. I find that it is permissible to end a tenancy if the landlord intends to use a basement suite rental unit as an extension of the upstairs living area. I find that this would include use as a guestroom for relatives when they are in town or as a “yoga studio or home cinema room”.

#### 2. Tenant’s Circumstances

Based on the tenant's testimony, it appears that he is making a genuine effort to better himself and start a new career. This is laudable. I accept that if the tenancy is ended, it would be disruptive to the tenant's efforts to do so. However, as argued by LH, such a disruption is not a basis to set aside the Notice. It is not the landlord's responsibility to support the tenant in his efforts of self improvement. The relationship between the tenant and the landlord is a purely contractual one, governed by the oral tenancy agreement and the Act. The tenant did not direct me to any authority in either of these that would support his argument that the Notice should be set aside because an eviction would be disruptive to his life.

Based on the foregoing, I find that the Notice was validly issued and that the circumstances of the tenant's personal life are not an appropriate basis to set aside the Notice.

### 3. Order of Possession

Section 55 of the Act states:

#### **Order of possession for the landlord**

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 to the landlord an order of possession of the rental unit if

- (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.

I find that the form of the Notice complies with section 52 of the Act.

As I have dismissed the tenant's application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective November 30, 2019 at 1:00 pm.

### **Conclusion**

I dismiss the tenant's application, without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver full and peaceable vacant possession and occupation of the rental unit to the landlord by November 30,

2019. In the event the tenant fails to comply, this order may be filed and enforced in the Supreme Court of British Columbia.

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: October 31, 2019

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Residential Tenancy Branch