



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNL, DRI

### **Introduction**

This hearing was convened in response to an application by the tenant filed September 19, 2019 under the *Residential Tenancy Act* (the Act) to cancel or set aside a 2 Month Notice to End Tenancy for Landlord's Use, and to dispute an additional rent increase.

Both parties appeared in the hearing and had an opportunity to be heard. The tenant was assisted by their son who provided interpretation. Each party was given full opportunity to present all relevant evidence and provide testimony in respect to the application and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all the relevant evidence that they wished to present. Both parties acknowledged receiving the evidence of the other as submitted to this hearing. The parties were in some contrast as to the exact day(s) evidence was exchanged, however both parties confirmed they had received the evidence, had reviewed it and were able to respond to it. As a result, all evidence submitted to this matter was deemed admissible, and upon which this decision is rendered.

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

Is the 2 Month Notice to End Tenancy for Landlord's Use dated September 14, 2019 valid? If so, is the landlord entitled to an Order of Possession?  
Has the landlord imposed an illegal / additional rent increase?

### **Background and Evidence**

The tenancy began May 2009. The parties agree the payable monthly rent has been \$600.00 for the 10-year duration of the tenancy and is due on the first day of the month. The parties agree that on September 18, 2019 the tenant was personally given a 2

Month Notice to End Tenancy for the Landlord's Use dated September 14, 2019. I have benefit of a copy of the Notice to End in the approved form, with a stated effective date of November 30, 2019. The reason stated on the Notice is the provision prescribed by Section 49(3) of the Act: for the landlord and their family to occupy the rental unit.

The landlord provided oral and document evidence of their intention to reclaim the basement rental unit space for their family's use. The landlord testified that after 10 years of renting the basement to the tenant, their growing family, and now older children, require additional space.

The tenant did not submit document evidence to this matter, other than a copy of the Notice to End. They do not dispute that the landlord will do as they state on the Notice to End. However, the tenant disputes the landlord's good faith intention for issuing the Notice to End at hand. The tenant testified that the "true reason" for the landlord seeking to end the tenancy is that the tenant refused to agree to pay an additional \$100.00 per month. The tenant testified the landlord notified them in August 2019 that the rent would be \$700.00 as of September 01, 2019. And, that when the tenant protested the landlord became angry. None the less, the tenant testified they have been paying \$650.00 since September 01, 2019. The landlord testified the tenant has indeed been paying \$650.00, but for some months now, following the tenant asking for an upgrade to the landlord's Telus account to receive viewing of sports channels. The landlord obliged and passed the expense for the extra viewing options to the tenant which they pay in addition to but together with rent, as it otherwise would have resulted in the tenant paying considerably more to establish their own separate Telus account.

The landlord testified they did not, and never has asked the tenant for a rent increase. They said they have always been mindful of the tenant's limited capacity to pay higher rent and that they themselves are financially secure and therefore have never needed to raise the rent, and do not seek more money from the tenant. The landlord testified that to have sought a \$100.00 rent increase would not have been worth the disruption of the 10-year tenancy relationship. The landlord agreed that in recent history there has been some friction with the tenant, and it has occasionally caused them to re-evaluate their entire situation. However, their family now requires additional space, and that it is the sole motive for ending the tenancy and permanently reclaiming the basement area as their personal space. The landlord provided a floor plan for remodelling of the basement to accommodate their needs. They also provided a signed contract for the remodelling work entered into September 01, 2019 to begin the work December 15, 2019, after the effective date of the Two Month Notice. It must be noted that the

intended remodelling is for a recreation room, a home gym, bathroom, and removal of the kitchen cabinets to accommodate a bar area.

## **Analysis**

*The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)*

*Residential Tenancy Policy Guideline #2A offers the following as a guideline in respect to the concept of good faith.*

### **B. Good Faith**

*In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636. Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)). If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith. If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case. If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.*

The above policy guideline goes on to address the following,

### **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.*

In this matter the tenant does not dispute the stated purpose of the landlord. That is, that the landlord will do as the landlord has stated in the Notice to End. However, the tenant argued the landlord may have an additional motive for ending the tenancy. I find that evidence pointing to an ulterior motive on the part of the landlord is insufficient and largely absent. I have not been presented sufficient evidence the landlord sought to increase the rent above what is permitted by the Act, or that a protest of a rent increase motivated the landlord's Notice to End in this matter. On the available evidence, I prefer the evidence of the landlord in finding, on balance of probabilities, that it reveals the landlord intends to follow through and do as they have stated on their Notice to End without clear evidence of an ulterior motive. Therefore, I must uphold the landlord's Notice.

I find insufficient evidence that the landlord has imposed an illegal rent increase.

As a result of all the above, the tenant's application effectively is **dismissed** in its entirety.

**Section 55(1)** of the *Act* provides that if a tenant's application to dispute a Notice to End Tenancy is dismissed, or the landlord's notice is upheld I must grant the landlord an Order of Possession. In relevant part Section 55 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 landlord's Notice to End for Landlord's Use of Property with an effective date of complies with the Act and as a result of upholding the landlord's Notice and dismissing the tenant's application I must grant the landlord an Order of Possession. As the effective date of the Notice to End has passed,

**I grant** the landlord an Order of Possession effective **2 days from the day it is served on the tenant**. This Order must be served on the tenant. If necessary, this Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

### **Conclusion**

The landlord's Notice to End is upheld. The tenant's application is dismissed.

The landlord is given an Order of Possession pursuant to Section 55(1) of the Act.

**This Decision is final and binding.**

*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: November 26, 2019

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Residential Tenancy Branch