



# 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 tenants' 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; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Tenant KS attended the hearing on behalf of the tenants. Both landlords attended the hearing, as did their daughter ("**PS**"). The landlords were represented at the hearing by counsel and by an agent. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

KS testified, and landlord's counsel confirmed, that the tenants served the landlords with the notice of dispute resolution form and supporting evidence package. The landlord's agent testified, and KS confirmed, that the landlords served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### **Issues to be Decided**

Are the tenants entitled to:

- 1) an order cancelling the Notice; and
- 2) recover their filing fee from the landlords?

### **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 rental unit is a single detached home. The tenants' family have resided in the rental unit for multiple decades. In 2015, the landlords purchased the rental unit and entered into a written, fixed term, tenancy agreement with tenant KS starting July 30, 2015 and ending September 1, 2016. The tenancy then converted into a periodic tenancy. Then, on June 26, 2017, the parties entered into the current tenancy agreement, which was a fixed term tenancy starting September 1, 2017 and ending August 31, 2018. Monthly rent is \$1,200 and is payable on the first of each month. The tenants continue to reside in the rental unit. The tenants did not pay the landlords a security or a pet damage deposit as a part of any of the tenancies.

On October 11, 2019, the landlord served the Notice on the tenants by registered mail. 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 Notice listed an effective date of December 31, 2019.

This was not the first two-month notice to end tenancy served on the tenants by the landlords for this reason. They previously served one on the tenants in April 2019. This notice was successfully disputed by the tenants on June 6, 2019. The presiding arbitrator cancelled that notice, writing:

Even if the Landlords' daughter does truly intend to move into this rental unit. I find that the landlords have submitted insufficient evidence to establish that they were acting in good faith when they served this Notice to End Tenancy.

Landlords' counsel stated that the landlords were not represented by counsel at the prior hearing and did not furnish the prior arbitrator with the evidence necessary to show that they were acting in good faith when issuing the prior two-month notice. He argues that they have now done so at this application.

PS testified that she intends on moving into the rental unit once the tenants vacate it. In support of this, she testified that she:

- 1) has changed her address on her driver's license to that of the rental unit;
- 2) tried to change her mailing address with Canada Post to that of the rental unit, but was unable to;
- 3) has put the utilities bills for the rental unit in her name;

- 4) works as a registered massage therapist and, in addition to living in the rental unit, intends to run a massage therapy business out of the rental unit;
- 5) attended the rental unit on November 25, 2019 with her father and a contractor to determine what renovations would be needed to update the rental unit to meet her needs; and
- 6) has already purchased household items for use in the rental unit once she gains possession of it.

KS disputed that PS attended the rental unit with a contractor. He testified that PS's mother (and not PS) attended the rental unit.

Counsel for the landlord stated that when the landlords purchased the rental unit it was their plan to have their daughter move into it once she was financially stable. In support of this, the landlords entered a copy of a Bare Trust and Agency Agreement dated September 16, 2015 (shortly, I note, after the landlords purchased the rental unit) between the landlords and PS, transferring the beneficial interest in the rental unit from the landlords to PS. Counsel argued that this shows a long-standing intention to use the rental unit for PS's benefit.

KS argued that the Bare Trust Agreement was either a forgery, or is invalid, as it was witnessed by someone with the same last name as the landlords and was not signed or sealed by a lawyer or notary. The landlords denied this.

KS disputed the Notice on two separate bases. He argued that:

- 1) the rental unit is too big for PS to occupy; and
- 2) the landlords want to end the tenancy so that they can re-rent it at a higher rate.

KS testified that the landlords' house (which is located next door to the rental unit) has a basement suite which PS could move into instead of the rental unit. He argued that PS does not require an entire house for herself, and that a basement suite would suit her adequately.

As stated above, PS testified she intends to run her massage therapy business out of the rental unit, and that she would be unable to do this if she lived in the basement suite of her parents' house.

KS bases his claim that the landlords intend to re-rent the rental unit at a higher monthly rate on events that transpired in 2018. He testified that in September 2018 the landlord notified him of their desire to have family members from India move into the rental unit.

On September 17, 2018, KS and the landlords signed an agreement wherein KS agreed to vacate the rental property by the end of April 2019 (the "**September Agreement**").

A copy of the September Agreement was entered into evidence by the landlords.

KS testified that the landlords told him in December 2019 that their family members could not get the required visas to move to Canada and told him that the tenants could remain in the rental unit past the end of April 2019, if they agreed to pay \$1,500 per month in rent. KS did not agree to this, and he testified that the landlords issued the first two-month notice to end tenancy as a result.

The landlords disputed this assertion. Counsel stated that the September Agreement was made to allow PS to move into the rental unit, not family members from India. He stated that the tenants changed their mind about moving out at the end of April 2019 and asked for more time. He stated that the landlords agreed to allow the tenants to remain in the rental unit until the end of December 31, 2019, on the condition they pay monthly rent of \$1,500.

Counsel for the landlords stated that the landlords sent a copy of a fixed-term tenancy agreement starting January 1, 2019 and ending December 31, 2019 with a monthly rent of \$1,500 to the tenants, but that the tenants refused to sign it. Accordingly, the landlords acted per the September Agreement, and issued the first two month notice to end tenancy on April 28, 2019 (which was cancelled at the June hearing).

### **Analysis**

Section 49(3) of the Act states:

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

(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.

Section 49(1) of the Act defines "close family member":

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

I find that PS is a close family member of the landlords, as defined by the Act. As such, I must determine if PS intends in good faith to occupy the rental unit.

Policy Guideline 2A considers the meaning of “good faith”. It states:

## 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. [...]

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 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.

Based on the testimony of PS, and on the documentary evidence before me, I find that PS intends to occupy the rental unit if the landlords obtain vacant possession. The landlords have satisfied me that they do not intend to re-rent the rental unit once the tenant has vacated the rental unit or use the rental unit for any other purpose. They have satisfied me that they do not have any ulterior motive in issuing the Notice.

I found PS’s testimony to be credible. I accept that she has taken steps in preparation to move into the rental unit including changing her address on her driver’s license to that of

the rental unit and attending the rental unit to see if renovations are required once she moves in. I accept her explanation as to why she wants to move into the rental unit as opposed to the basement suite of her parents' house. I find her explanation that she intends to operate a massage therapy business out of the rental unit to be reasonable and accept that she would not be able to do this out of the basement suite.

I find additional support for the landlords' position in the existence of the Bare Trust Agreement. I have no basis to believe it is a fraudulent document, and I am unaware of any authority which requires such an agreement be signed or sealed by a lawyer or notary. As such, I find that it is a genuine document, and that the landlords hold legal title only on the residential property in question, and PS holds the sole beneficial interest.

The existence of the Bare Trust Agreement accords with the landlords' position that they always intended for PS to move into the rental unit once she was financially able to do so. The current circumstances reflect this intention, as the landlords now seek to move PS into the rental unit and PS has testified that she intends to run a business out of the rental unit as well as live there.

As I have accepted PS's evidence as credible, I find that it cannot be an ulterior motive of the landlords to end the tenancy so as to allow them re-rent the rental unit at an increased monthly rent. PS's occupation of the rental unit would prevent the rental unit from being rented out to other tenants.

Additionally, I find the landlords' explanation as to the circumstances which gave rise to the creation of the September Agreement to be more credible than the tenants' explanation. It accords with PS's evidence and the existence of the Bare Trust Agreement. The tenants provided no evidence which supported KS's assertion that the landlords initially wanted to end the tenancy to allow family members from India to move into the rental unit. Based on the strength of PS's testimony, I am satisfied that this is not a motivation for the landlords' issuance of the Notice.

As such, I find that the Notice was issued in good faith and is valid.

Accordingly, I dismiss the tenants' application to cancel the Notice.

As the tenants have been unsuccessful in their application, I decline to award them the recovery of their filing fee.

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.

At the hearing, counsel for the landlords stated that, in the event the landlords were successful, they seek an order of possession effective March 31, 2020.

As I have dismissed the tenants' 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 March 31, 2020 at 1:00 pm.

**Conclusion**

I dismiss the tenants' application, without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenants deliver full and peaceable vacant possession and occupation of the rental unit to the landlords by March 31, 2020.

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, 2020

---

Residential Tenancy Branch