



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNL

### Introduction

A hearing was convened on December 12, 2019 as a result of an Application for Dispute Resolution filed by the Tenants, in which they applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property.

At the hearing on December 12, 2019 the Tenant stated that on November 14, 2019 the Dispute Resolution Package and a copy of the Two Month Notice to End Tenancy for Landlord's Use were mailed to the Landlord, via registered mail, at the service address noted on the Application for Dispute Resolution. The Tenant cited a Canada Post tracking number to corroborate this testimony.

In the absence of evidence to the contrary, I determined that these documents had been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing. As the aforementioned documents were served to the Landlord, the hearing proceeded in the absence of the Landlord.

The hearing on December 12, 2019 was adjourned for reasons outlined in my interim decision of December 12, 2019. The hearing was reconvened on March 09, 2019 and was concluded on that date.

At the hearing on March 09, 2020 the Tenant stated that the Dispute Resolution Package was inadvertently mailed to an incorrect address for the Landlord. He stated that on December 23, 2019 the Dispute Resolution Package and a copy of the Two Month Notice to End Tenancy for Landlord's Use were mailed to the Landlord, via registered mail, at the service address noted on the Application for Dispute Resolution.

At the hearing on March 09, 2020 the Landlord stated that he received the documents that were mailed to him on December 23, 2019. As the Landlord has received the Application for Dispute Resolution and was in attendance at these proceedings, I find it appropriate to consider the merits of the Application for Dispute Resolution.

I received the Two Month Notice to End Tenancy for Landlord's Use that was submitted after the hearing on December 12, 2019. As the Landlord acknowledged receiving this document as evidence, it was accepted as evidence for these proceedings.

The Landlord submitted no evidence in regard to the matter.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

#### Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property be set aside?

#### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 1999;
- the current rent is \$694.00;
- on October 30, 2019 the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use, which declared that the Tenants must vacate the rental unit by December 31, 2019; and
- the reason for ending the tenancy cited on the Notice is that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Landlord stated that the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenants because his son, who is currently living outside of Canada, intends to move into the unit. He stated that his son will move to Canada as soon as the rental unit is vacant.

The Tenant argued that the Two Month Notice to End Tenancy for Landlord's Use was not served in good faith because there were two units vacant in this residential complex when the Notice to End Tenancy was served. He argued that the Landlord's son could have moved into one of those vacant units.

The Landlord stated that to when the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant there was only one vacant unit in this residential complex.

When the Landlord was asked why the one vacant rental unit would not have been suitable for his son to move into, the Landlord stated that the unit needed painting.

When the Landlord was asked why his son could not move into the vacant rental unit after it was painted, the Landlord stated that the carpets in that unit were replaced with tile and that the bathroom was renovated, which took approximately 1.5 months.

When the Landlord was asked why his son could not move into the vacant rental unit after it was fully renovated, the Landlord stated that he wanted to make nicer renovations in the unit his son would be occupying.

The Landlord stated that the Tenants' unit had mice and also needed to be renovated.

The Tenant argued that the Two Month Notice to End Tenancy for Landlord's Use was not served in good faith because there is currently a unit vacant in this residential complex, which the Landlord's son could occupy. The Landlord stated that he uses the unit the Tenant is referring to is not vacant, as he uses it as his office.

The Tenant argued that the Two Month Notice to End Tenancy for Landlord's Use was not served in good faith because a two bedroom unit was re-rented in January of 2020, which could have been provided to the Landlord's son. The Landlord stated that the two bedroom unit was not suitable, as his son does not require two bedrooms.

### Analysis

Section 49(3) of the *Residential Tenancy Act (Act)* authorizes a landlord to end tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Branch Policy Guideline 2A, with which I concur, reads, in part:

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.

Even if I accepted the Landlord's testimony that his son intends to move into this rental unit, I would find that the Landlord has submitted insufficient evidence to establish that the Two Month Notice to End Tenancy for Landlord's Use was served in good faith. In reaching this conclusion I was heavily influenced by the undisputed evidence that when this Notice to End Tenancy was served on October 30, 2019, there was at least one empty unit in the residential complex.

I find that the Landlord's explanation that his son could not move into that vacant unit because it needed to be renovated is inadequate. Given the Landlord's testimony that it only took 1.5 months to renovate the vacant unit, the son would have been able to move into the renovated vacant unit before the Tenant's rental unit was vacated on the basis of the Two Month Notice to End Tenancy for Landlord's Use.

I find that the Landlord's explanation that his son could not move into that vacant unit because he wanted to make nicer renovations to the unit his son would be occupying is also inadequate. Even if this statement is true, I find that the Landlord could simply have renovated the vacant unit to a higher standard.

As the Landlord had the ability to renovate a vacant rental unit in the residential complex to any standard suitable for his son, I find that the Landlord did not need to end

this tenancy as his son could have moved into the renovated vacant rental unit. I therefore find that the Landlord submitted insufficient evidence to establish that this Two Month Notice to End Tenancy for Landlord's Use was served in good faith.

In considering the issue of good faith, I was further influenced by the Landlord's testimony that the Tenants' unit had mice and needed to be renovated. I find that this testimony suggests that there was an ulterior motive for ending the tenancy, which was that he wished to renovate the unit.

As the Landlord has submitted insufficient evidence to establish that the Two Month Notice to End Tenancy for Landlord's Use was served in good faith, I grant the Tenants' application to cancel this Notice to End Tenancy.

### Conclusion

The Two Month Notice to End Tenancy for Landlord's Use is set aside and is of no force or effect. This tenancy shall continue 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: March 09, 2020

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Residential Tenancy Branch