



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding G.S. KANG & SONS INVESTMENTS LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNL OLC FFT

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 10, 2020 (2 Month Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, an advocate for the tenant DV (advocate), the principal for the landlord company GK (principal), an agent for the landlord CM (agent), an articulated student RA (student), a support person for GK, MK (support), and the son of the principal, GK (son) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. The tenant, advocate, principal, agent and student were affirmed.

The parties confirmed receiving documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. Given the above, I find there were no issues with the service of documentary evidence.

### Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 2 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 2 Month

Notice and the tenant's application to recover the cost of the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. If an order is granted, it will be emailed to the appropriate party for service on the other party.

### Issues to be Decided

- Should the 2 Month be cancelled under the Act?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A month to month tenancy began on December 1, 2003. Current monthly rent in the amount of \$876.00, which includes parking, is due on the first day of each month.

The tenant confirmed that they were served on February 19, 2020 with the 2 Month Notice dated February 10, 2020. The effective vacancy date on the 2 Month Notice is listed as April 30, 2020. The tenant disputed the 2 Month Notice on March 2, 2020, which was within the allowable time limitation under the Act of 15 days. Page two of the 2 Month Notice indicates the reason as "The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

The tenant indicated that they were disputing the 2 Month Notice because they do not believe the landlord issued the 2 Month Notice in good faith, and cited that the landlord has a personal vendetta against the tenant as they tenant used to be the on-site property manager, and was fired by the landlord and that currently, the parties have a labour relations matter outstanding regarding the landlord terminating the tenant's employment as property manager.

In addition, the tenant provided a photo (the photo) of a sign indicating that the property managers, Stan and Karen, hired after the tenant was terminated, were moving to the interior of British Columbia (BC). The actual location in BC has been removed to protect the privacy of Stan and Karen. The tenant testified that the photo was taken on March 22, 2020 and that the tenant spoke to Stan a few days before their departure on March 26<sup>th</sup> and that they obtained possession of their new home in the interior of BC on

February 14, 2020, and that as a result, the landlord would have been aware of their imminent move out of unit 204 in either January or early February, 2020.

The tenant also explains with the photo the following:

“On March 27<sup>th</sup> at approximately 11:20am, I received a telephone call from a prospective tenant, due to when Karen and Stan moved out they removed the sticker with their phone number from the building intercom, revealing my phone number from when I was the manager. During this phone call the prospective tenant advised me that she was told to meet at this address to view an available suite but she was not given any contact information.

After directing her to contact the new manager (Phil), I then placed a call to Phil myself. I requested that he remove my number from the intercom listing as the manager due to the most recent phone call from the prospective tenant. Phil disclosed that he was unaware that the suite had been listed as it needed to be cleaned and required some work.

Hence, it was common knowledge to the Landlord that there would be a suite available before the end of March. Additionally, this information would have been available to the Landlord no later than the end of January, well before the Notice to End Tenancy, dated February 10<sup>th</sup>. It was sent to me via registered mail on February 19<sup>th</sup> and received by me on February 21<sup>st</sup>.”

The agent was provided the opportunity to respond to this evidence presented and the agent had no response to provide. The agent did not indicate why unit 204, where former resident managers Stan and Karen resided during the period of 2018 to 2020, was not suitable as a caretaker unit.

The agent presented a list of current rents in the building and argued that based on the list, with many tenants being long-term tenants, that the landlord is not evicting for more rent, but that the rental unit has several unique qualities such as a water view and balcony where GK would be able to gaze and have surveillance for security purposes over the building and the unit is also close to a stairwell for maintenance purposes. The agent stated that it is the principal's decision to hire GK as their new caretaker and submitted affidavits in support.

The landlord stated that in a show of good faith, the landlord would not enforce an order of possession until the end of June 2020. The agent stated that rent in the building is “uber affordable” for the location. The agent indicated that the landlord has worked with

different tenants and made many concessions to keep rent low due to hardship, old age, etc.

The tenant wanted to raise the issue of other tenants leaving the building in 2011 and 2012, and the parties were advised that I would not be considering matters dating back to 2011 and 2012 as they were too historical to be relevant to the matter before me.

The agent stated that the landlord is acting with an honest intention and that nothing presented by the tenant establishes an ulterior motive.

The tenant's position is that the landlord could have used the rental unit vacated by Stan and Karen (unit 204) as the landlord would have been advised prior to the 2 Month Notice being issued that their unit as property managers was coming vacant and the tenant continues to occupy their rental unit and feels like they are being targeted by the landlord due to the ongoing labour relations described above. In support of the labour relations matter was an email dated August 13, 2019, which indicates an impasse regarding negotiation related to an "employment matter" listed in the subject line.

The tenant also testified that as a former resident manager for 7.5 years, that the view discussed by the agent would not help being a resident manager and that there are only 7 units per floor, which means all units are close to stairwells, and as a result, the tenant questions the rationale presented by the agent.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**2 Month Notice to End Tenancy for Landlord's Use of Property** – The tenant disputed the 2 Month Notice by stating that they do not believe the landlord is issuing the 2 Month Notice in good faith. The tenant presented evidence which supports there is an ongoing labour relations matter between the parties. Furthermore, the tenant provided evidence including a photograph from March 2020 indicating that former resident managers Stan and Karen were moving and that Phil and Chloe of unit 103 would be taking over.

RTB Policy Guideline 2A speaks to good faith as follows:

#### 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 there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

Given the evidence before me, I disagree with the agent's statement when they said "nothing presented by the tenant establishes an ulterior motive." I afford significant weight to the non-response of the landlord and agent when the tenant asked why unit 204 was not considered for the landlord's son, GK. As a result, I find it more likely than not, on the balance of probabilities, that the landlord preferred to have the tenant evicted, versus having GK occupy unit 204, and that the 2 Month Notice was not issued in good faith as a result.

While a landlord can normally determine which rental unit is best for their new resident manager, when the issue of good faith is raised; however, the landlord has the burden to prove that there was an honest intention and no ulterior motive. This is where I find the matter before me is unique in that the tenant has provided evidence that unit 204 was available at the material time when GK could have moved into the unit 204 without a tenant being evicted from the building and instead, the agent and landlord provided a non-response regarding unit 204 during the hearing and made the decision to issue a 2 Month Notice to the tenant and did not serve that 2 Month Notice until February 19, 2020 by registered mail. Therefore, I find the landlord has failed to provide a reasonable response to the issue raised by the tenant regarding unit 204 being available and that a non-response outweighs the agent's testimony that the landlord is acting in good faith. I find it reasonable that the landlord would have been aware that Stan and Karen were vacating unit 204 and I find the evidence of the tenant to be believable and reasonable. I find the landlord has failed to meet the burden of proof to clearly demonstrate that the 2 Month Notice was issued in good faith by failing to reasonably address why unit 204 was not suitable. Therefore, I find the tenant's application to cancel the 2 Month Notice is successful, and I cancel the 2 Month Notice issued by the landlord dated February 10, 2020.

**I ORDER** the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant the \$100.00 filing fee pursuant to section 72 of the Act. **I authorize** a one-time rent reduction for the tenant in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The tenant's application to cancel the 2 Month Notice is successful. The 2 Month Notice issued by the landlord is cancelled and is of no force or effect. I find the 2 Month Notice was not issued in good faith.

The tenancy shall continue until ended in accordance with the Act.

The tenant is granted a one-time rent reduction as noted above for the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 11, 2020

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Residential Tenancy Branch