



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Delaney Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, RR, OLC, RP

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, by teleconference, was held on May 25, 2020. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. The Landlord confirmed receipt of all amendments and evidence served to them by the Tenant. The Tenant confirmed receipt of the Landlord's evidence packages. Both parties served these packages by email. Neither party took issue with the service of these documents. I find the Tenant sufficiently served her application, amendments, and evidence. I also find the Landlord sufficiently served their evidence to the Tenant.

### Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act* some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- to cancel a 2-Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice").

### Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Tenant acknowledged receiving the Notice on March 27, 2020. The Landlord issued the Notice for the following reason:

*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). The Landlord indicated one of her children would be moving in.*

In the hearing, the Landlords (owners) were asked to explain why the Notice was issued. The Landlords explained that this rental unit is part of a duplex house. They live on one side of the duplex, and this rental unit is adjacent to them. The Landlord explained that both sides consist of 2 bedrooms. The Landlords explained that this Notice is not personal, and they don't have any issues with the Tenant. Rather, they explained that they have 5 different children, 21 to 26 years of age. The Landlords stated that ever since COVID hit, the job market has been bad, especially for younger people like their children. The Landlords stated that they only have 2 bedrooms in their half of the duplex, and there is simply not enough room to accommodate all of their children.

More specifically, the Landlords stated that, of the 5 children, 3 of them are wanting to move back home. The Landlords stated that one of their daughters is living in town, and graduates her dental hygiene program at the end of May. The Landlords explained that this is a very difficult time for her to find work, and find her own place to live. The Landlords explained that she is currently living in their second bedroom, but it is not sustainable, and they need more room.

The Landlords also stated that one of their other daughters is in an abusive relationship, and lives nearby. The Landlords stated that she has signalled that she wants to flee her relationship, and needs somewhere more permanent to move to. The Landlords stated that she intends to move into this rental unit once it becomes available.

The Landlord also explained that they have a son, who currently lives in Alberta, and he is having a difficult time finding work there. The Landlords stated that he is a plumber, and intends to move back to stay in this rental unit while he looks for work and attempts to pass his Red Seal exams.

The Landlords stated that with so many kids with varying needs, they just need the space to house them, as their two bedroom unit is too small to be able to help out their children. The Landlords stated that they don't want to be landlords anymore and have no interest in renting out this rental unit again.

The Tenant stated that she is self employed and has suffered a large decrease in business since the COVID pandemic hit. The Tenant stated that she is living off of Government supplements and she doesn't have the ability to simply move to another location. The Tenant also stated that her daughter has a service dog, which makes it even more difficult to find a different rental unit. The Tenant stated that she feels the Landlords are trying to evict her because they don't like her, or her dog and have issues with the dog excrement left in the yard. The Tenant expressed that the Landlords' children should be able to use the government supplements to find their own housing and it is not fair she has to move.

### Analysis

Based on the evidence and testimony before me, I make the following findings:

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that they (their children) intend in good faith to occupy the unit (as indicated on her 2-Month Notice).

I acknowledge that there has been degradation in the relationship between the Landlords and the Tenant. The Tenant is suggesting that the Landlords are not acting in good faith.

Once the Landlord's good faith intentions are called into question, the burden of proof rests with the Landlord to demonstrate that they, in good faith intend to accomplish the stated purpose on the Notice. I note that Policy Guideline #2A states the following:

## **B. GOOD FAITH**

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.

[...]

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.

I have considered the testimony and the evidence on this matter, in totality, and I note the Tenant feels the Landlords no longer wants her to live there, partly because they have issues with her dog running around the property. The Tenant feels it is somewhat personal. However, the Landlords stated that this has nothing to do with the Tenant's dog, and is about providing a place to live for their children. I note the Landlords live in the adjacent duplex unit, and it appears they only have two bedrooms of their own, and they require more space for their children to use.

The Landlords indicated they have 5 children aged 21-26, 3 of which have an interest in moving back home. One of them is already living in the Landlords' side of the duplex but more space is required. It appears two of the other children who want to move in are waiting for this Tenant to vacate. I accept that the Landlords have multiple adult children. I also accept that the Landlords currently do not have the space to accommodate everyone on their side of the duplex, which is why they want to stop renting the other half of the duplex out, and use it for accommodation for their children.

I find the Landlords' explanation as to why they need more space is reasonable, and is compelling. I find the Landlords have sufficiently demonstrated their good faith intentions. The Tenant's application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the

requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

I note that under the Act, if the Landlords' children do not move into the rental unit as set out in the 2-month notice, the Tenant would be entitled to compensation as follows:

***Tenant's compensation: section 49 notice***

*51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

*(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

However, this matter would need to be adjudicated after the Landlord has been given a chance to accomplish the stated purpose.

**Conclusion**

The Tenant's application to cancel the Notice to End Tenancy dated March 27, 2020, is dismissed.

The Landlord is granted an order of possession effective May 31, 2020, at 1pm, after service on the Tenant. If the Tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: May 25, 2020

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Residential Tenancy Branch