



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, OLC, MNDCT, OPL, FFL

### Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to dispute a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") and the landlord applied for an Order of Possession based on the 2 Month Notice.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. I confirmed that the parties had exchanged their respective hearing documents and materials upon each other, and I admitted the documents and materials into evidence, to be considered in making this decision.

At the commencement of the hearing, the tenants had a witness with them. The witness was excluded with instruction to wait outside until called to testify. The tenants did not call their witness to testify during the hearing.

### Procedural Matters

In filing the landlord's Application for Dispute Resolution, three co-landlords were identified. The owner appeared at the hearing, along with a person (referred to by initials DVD) who identified herself as the "former landlord" and when I enquired further as to when she was a landlord, DVD described herself as the owner's "former manager" of the property for the period of December 4, 2019 through to February 25, 2020. The landlord and DVD confirmed that DVD is no longer acting as the landlord's property manager. The landlord also confirmed that the other named co-landlord, referred to by initials BK, is also no longer acting as his agent or manager. Since DVD and BK are no longer acting in the capacity of an agent or property manager their names were excluded from the style of cause. The tenant pointed out that another individual by the

Tom had represented himself as an agent for the landlord and the tenant expressed that she is uncertain who she is to be dealing with. The landlord appearing before me confirmed he is the owner of the property and that he is currently managing the property. Accordingly, the tenant was directed to deal with the owner until notified by the owner otherwise.

It should also be noted that the tenant had sought monetary compensation in filing this Application for Dispute Resolution that appears to be a request for \$2800.00 in the event the tenancy is ended. I did not consider the tenant's monetary claim as the Act provides a specific provision for compensation payable to a tenant where the tenancy is ended for landlord's use, including the amount and timing of such compensation, which is the equivalent to one month's rent payment payable at the end of the tenancy; and, the request is premature.

#### Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be upheld or cancelled?

#### Background and Evidence

The landlord purchased the subject residential property and title was transferred to him on December 4, 2019. The residential property contains a duplex that had two rental units (herein referred to as the rental unit and the other unit is referred to as unit A for purposes of this decision).

The landlord acknowledged he does not know much information about the terms of the tenancy agreement as he was not provided a copy of a written agreement by the former owner or former landlord. The landlord only knows the amount of rent payable by the tenants.

The tenant testified that the male tenant started a tenancy with the former property management company in 2011 and the female tenant was added as a tenant in 2012. The tenant testified that a security deposit of \$350.00 was paid and a pet damage deposit of \$350.00 was paid as the monthly rent was originally set at \$700.00 per month. The tenant indicated that she could probably obtain a copy of the tenancy agreement from the former property management company and I encouraged her to do so and provide a copy to the current landlord.

Both parties provided consistent testimony that the tenants are currently required to pay rent of \$744.05 on the first day of every month.

On February 28, 2020 the landlord issued the subject 2 Month Notice with a stated effective date of April 30, 2020. The reason for ending the tenancy, as stated on the 2 Month Notice is:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse child; or the parent or child of that individual's spouse)*

The landlord's agent, BK, attempted to serve the 2 Month Notice to the tenant, in person on February 28, 2020. DVD testified that it was she who asked BK to deliver the 2 Month Notice on February 28, 2020. The tenant refused to accept the 2 Month Notice and it was placed in the tenant's mailbox. The tenant failed to dispute the 2 Month Notice within the time limit for doing so.

Below I have summarized the parties' respective positions with respect to issuance of the subject 2 Month Notice.

The landlord testified that when he decided to buy the property in 2019, he planned to renovate unit A and then move into unit A; however, he renovated unit A and rented it out. The landlord explained that he began a relationship with a woman, which he described as an "on and off" type of relationship, and at times he was living with the woman and at other times he was residing at his mother's house or his brother's house. The landlord testified that he renovated unit A between December 2019 and February 2020 and despite his original intention to move into unit A, since he was living with the woman he was in a relationship with he entered into a tenancy agreement for unit A in February 2020. The landlord submitted that the tenancy agreement he entered into for unit A is a fixed term. After entering into the tenancy agreement for unit A, the landlord broke up with the woman he was in a relationship with so he needs to move into the rental unit since unit A is subject to a fixed term tenancy agreement.

I asked the landlord to describe the time period his relationship started and ended. The landlord did not appear to know but estimated it was approximately six months in length. When asked when the relationship ended, the landlord started to say February but then DVD interrupted him and said they broke up in March. At that point I determined that DVD was the woman the landlord was in a relationship with when he purchased the property and that the landlord and DVD had more than just a property management relationship as DVD had put forth at the start of the hearing. DVD stated that she and

the landlord continue to operate a business together. I directed DVD to not answer for the landlord. DVD stated that she and the landlord were still in business together.

As part of the landlord's evidence were photographs of the inside of the rental unit. The landlord's submissions indicated that he considered the tenant to be a hoarder and that he reported the living situation to child protective services, among other agencies.

The tenant called into question the landlord's good faith intention in issuing the 2 Month Notice. The tenant pointed out that the former tenants of unit A were paying rent of just over \$800.00 and the landlord re-rented unit A for \$1700.00 after stating his intention was to live in unit A. Now, the landlord is making the same claim, that he intends to live in the rental unit, but the tenant suspects the landlord intends to renovate and re-rent the rental unit for much more.

The tenant also pointed out that when the landlord first bought the property he met the tenant in the rental unit and told her that his brother was supposed to move onto the property but that he was not overly reliable and that the tenants, having been tenants for 8 years, would be a better choice and the landlord wanted to keep them as tenants since he would be moving into unit A.

The tenant pointed out that the 2 Month Notice was issued on February 28, 2020, yet the landlord testified that he did not break up with DVD until March 2020 so his reason for wanting to move into the rental unit is inconsistent.

The tenant submitted that when she went to the landlord's service address that is listed on the 2 Month Notice, it is the landlord's mother's house, and when she asked for the landlord, she appeared surprised that the tenant would look for him there.

The tenant was of the position the landlord is trying to harass her by taking the photographs and making reports to child protective services. I noted that the photographs did appear to depict a very cluttered unit, including an animal living in a cage under a significant amount of possessions. The tenant stated those pictures were of the basement and she was sheltering the rabbit because it was winter.

The landlord recalled meeting the tenant when he first purchased the property to introduce himself as the new owner but denied he said they could stay on as tenants. The landlord denied that he evicted the tenants in unit A for landlord's use but that he was informed by his Realtor that the tenancy for unit A was ending anyways. The landlord acknowledged unit A was re-rented for \$1700 but explained that unit A was

dilapidated before he renovated it. The landlord stated that the pictures provided of the rental unit were not just of the basement but of the entire house.

### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

To end a tenancy so that the owner may occupy the rental unit requires not only that the landlord intends to occupy the rental unit for at least six months but that the landlord have a “good faith” intention in doing so. This is provided under section 49(3) of the Act which corresponds to the reason stated on the 2 Month Notice served upon the tenant, and section 51(2) of the Act. Section 49(3) provides as follows:

(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.

[My emphasis underlined]

Residential Tenancy Branch Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* provides information and policy statements with respect to the “good faith” requirement. The policy guideline provides, in part:

#### 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.

[My emphasis underlined]

It was undisputed that unit A garnered a significant increase in rent to \$1700.00 per month after it was renovated. This points to a motivation the landlord may have in ending the subject tenancy since the tenants' monthly rent is only \$744.05.

Since the landlord has the burden to prove he intends to occupy the rental unit for at least six months after the tenancy ends and that he does not have an ulterior motive in ending the tenancy, and the tenant called the landlord's good faith into question, I turn to the landlord's evidence.

I note that much of the landlord's evidence focuses on what the landlord describes as "hoarding", a "mess" and "fire hazard" in the rental unit. The landlord appears to take issue with the co-tenants referring to themselves as "roommates" despite see what appears to be sharing of a bed and posts on social media. I find this evidence does not support the landlord's intention to occupy the rental unit for the reasons he provided. Rather, this evidence actually points to the landlord having an ulterior motive to end the tenancy due to the condition in which the tenants maintain the property.

The landlord submitted that he had intended to reside in unit A but that he cannot move into unit A now because he entered into a fixed term tenancy with new tenants for that unit; yet, the landlord did not provide a copy of the fixed term tenancy agreement to

prove that when such a document should have been readily available to him. Nor, did he call the tenants of unit A as witnesses. Accordingly, I find the landlord did not provide sufficient evidence to corroborate his position that he cannot move into unit A due to a fixed term tenancy agreement in place for that unit.

The landlord indicates that his original plan was to move into unit A but those plans changed because he started living with DVD; however, I find the landlord's testimony concerning his relationship with DVD and moving in with her and then breaking up with her was less than clear and not corroborated. The landlord claims to have been living with his mother during his relationship with DVD and after he broke up with DVD. There is a letter purportedly written by the landlord's mother supporting the assertion that the landlord has moved in with her, but the landlord's mother was not called to testify and not subject to further examination. Nor, did the landlord provide documentation that would point to the location of his residence such as driver's license or other documents that would contain his address. I was also troubled by the less than forthcoming description of DVD's role at the start of the hearing, that she was "the former landlord", without disclosing that she could actually be a witness to the landlord's relationship with her and the landlord's location of residence at relevant times. In not being forthcoming as to her potential to be a witness, DVD had not been excluded as a witness at the start of the hearing and, as such, she was tainted as a witness and I did not permit her to testify as to the landlord's relationship and residency.

In light of the above, I find the tenants successfully called the landlord's good faith intention into question and the landlord failed to sufficiently rebut their position and demonstrate the landlord truly intends to occupy the rental unit for at least six months in the absence of any ulterior motive. Therefore, I grant the tenant's request and I cancel the 2 Month Notice dated February 28, 2020.

Having cancelled the 2 Month Notice, the landlord's application is dismissed.

Since the tenants were successful, I award them recovery of the \$100.00 filing fee paid for their application. The tenants are authorized to make a one-time deduction of \$100.00 from a subsequent month's rent payment in satisfaction of this award.

Taking into consideration that the landlord provided photographs that may be consistent with hoarding and fire hazards in the rental unit, the tenants are cautioned that they are responsible for maintaining the rental unit under section 32(2) and (3) of the Act. Below, I have reproduced these provisions:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The tenants are further cautioned that causing damage or creating a significant risk to the property or other occupants of the property a basis for ending a tenancy for cause under section 47 of the Act. If that is the case, the landlord remains at liberty to issue the appropriate documents to the tenants that may include: a breach letter to the tenants that would require the tenants to correct the breach within a reasonable time and/or a 1 Month Notice to End Tenancy for Cause.

### Conclusion

The 2 Month Notice issued on February 28, 2020 is cancelled and the tenancy continues at this time. The tenants are awarded recovery of the filing fee they paid for their application and the tenants are authorized to make a one-time deduction of \$100.00 from a subsequent month's rent payment in satisfaction of this award.

The tenants are cautioned that they are responsible for maintaining the rental unit under section 32(2) and (3) of the Act and that causing significant damage or creating a significant risk to the property or other occupants is a basis for ending the tenancy for cause under section 47 of 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: May 12, 2020

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Residential Tenancy Branch