



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”);

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s advocate (the “Advocate”), the Landlord, the Landlord’s Spouse (who is also an owner of the rental unit, and an agent for the Landlord (the “Agent”), all of whom provided affirmed testimony. The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package and both parties confirmed receipt of the others documentary evidence. Neither party raised concerns regarding the consideration of the documentary evidence before me.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

### Preliminary Matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded

with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

If the Tenant’s Application is dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The one year fixed-term tenancy agreement in the documentary evidence before me states that the tenancy began on September 1, 2006, that rent in the amount of \$650.00 is due on the first day of the month, and that water, electricity, heat, garbage collection, parking for one vehicle, window coverings and standard kitchen appliances are included in rent. In the hearing the parties confirmed that rent is currently \$728.00, that the tenancy is month-to-month (periodic) and that the Tenant paid a security deposit in the amount of \$325.00, which the Landlord still holds.

The Agent stated that the Landlord’s spouse, who is their mother, became ill last year and collapsed, necessitating a 911 call. The Agent stated that the family decided that it would be a good idea for the Landlord’s daughter to move into the basement suite for the health and safety of the Landlord’s spouse. The Agent stated that as a result, a Two Month Notice was posted to the door of the rental unit on February 18, 2020. In the hearing the Tenant confirmed receipt on the following day, February 19, 2020.

The Two Month Notice in the documentary evidence before me is signed and dated February 18, 2020, has an effective date of April 30, 2020, and states that the reason for service the notice to end tenancy is because the rental unit will be occupied by the child of the Landlord or the child of the Landlord’s spouse.

In support of the Two Month Notice, the Landlord submitted a one year fixed-term tenancy agreement for the rental unit between themselves and their child, effective May 1, 2020. The Agent also stated that the Tenant did not pay April rent, which they took as confirmation that the Tenant intended to comply with the Two Month Notice, as they assumed the Tenant withheld the rent pursuant to section 51 (1) of the *Act*. The Tenant agreed that rent has not been paid but denied withholding it pursuant to section

51 (1) of the *Act*. Instead the Tenant stated that they attempted to pay the rent but their payment attempts were refused.

The Tenant and their Advocate pointed to Residential Tenancy Policy Guideline (the "Policy Guideline") #2A and argued that the Two Month Notice has been served in bad faith, because:

- The Landlord is trying to avoid their obligations to repair and maintain the rental unit; and/or
- The Landlord wants the rental unit vacant so that renovations and repairs can be completed in a more cost-efficient manner; and/or
- The Landlord wants to evict the Tenant so that the rental unit may be re-rented for an increased rent amount.

The Tenant and their Advocate stated that the rental unit has not been maintained by the Landlord in compliance with section 32 of the *Act* or Policy Guideline #40, regarding the useful life of building elements. The Tenant stated that there is mold and water damage in the rental unit and that the carpets and paint have not been replaced during the 15 year tenancy. In support of this testimony the Tenant and the Advocate pointed to photographs in the documentary evidence.

While the Agent and Landlord agreed that there have been some water ingress issues in the rental unit, they denied that the issue was as severe or significant as alleged by the Tenant. The Landlord and Agent also denied any awareness of mold issues until March 11, 2020, which was after the date the Two Month Notice was served. As a result, they stated that avoiding their responsibilities in relation to mold formed no basis for the issuance of the Two Month Notice.

While they also agreed that the rental unit has not been painted and that the carpets have not been replaced, they denied the Tenant's allegation that the reason they want to end the tenancy is to avoid their obligations under the *Act* or to complete renovations or repairs at a reduced cost to themselves. They also denied that they have failed to meet their obligations to repair and maintain the rental under the *Act*, as they recently replaced the Tenants stove. In support of this Testimony the Landlord provided a photograph of the stove and a receipt dated March 12, 2020.

The Tenant and their Advocate also argued that the Landlord intends to re-rent the rental unit at an increased cost after the Tenant vacates, however, the Agent denied this allegation, pointing to the tenancy agreement in the documentary evidence before me showing that the Landlord's daughter will not be responsible to pay any rent.

The Tenant and their Advocate stated that the Tenant's rental unit is located in a very large and expensive home, that the Landlord, his wife and his son, who is the Agent, live upstairs, and that there is ample room for the Landlord's daughter to reside with the Landlord upstairs, where they previously resided prior to moving out 1.5 years ago. They also argued that it makes more sense for the Landlord's daughter to live upstairs, given the reasons stated for their daughters return to the home. The Agent stated that the Landlord's daughter intends to reside in the rental unit with their partner, and as a result, the rental unit is a more suitable living situation for them than residing with the Landlord. The Tenant and Advocate questioned the authenticity of the Agent's testimony on this matter.

The Tenant and their Advocate argued that the Landlord previously tried to exploit the Tenant and take advantage of their difficult financial situation by serving them with a 10 Day Notice for Unpaid rent or Utilities (a "10 Day Notice") when they were having cashflow issues. The Advocate stated that the Landlord was aware that the Tenant's financial difficulties were the result of transitioning from one income source to another and denied that rent was late. The Advocate also stated that the issuance of the previous 10 Day Notice demonstrates that the Landlord has previously tried to end the tenancy for other reasons.

The Agent agreed that a previous 10 Day Notice was served but stated that it was the Landlord's right to serve that notice as rent was unpaid, that non-payment of rent is not the reason the Landlord is currently seeking to end the tenancy, and that in any event, the parties settled that dispute at a hearing with the Branch and the 10 Day Notice was subsequently withdrawn and the tenancy continued for almost an entire year before the Two Month Notice was served. The Agent argued that if the Landlord had wanted to end the tenancy for non-payment of rent, they would not have settled and agreed to continue the tenancy.

The Tenant and their Advocate also suggested that the Landlord is choosing to evict the Tenant, rather than another occupant of a different rental unit on the residential property, for financial gain, as they think that the other rental unit is in better condition and is rented for more money per month.

Overall, the Tenant and their Advocate argued that the Landlord has not met the burden of proof incumbent upon them in order to demonstrate that they have grounds under the *Act* to end the tenancy. They also argued that I should draw an adverse inference from the fact that more documentary evidence has not been submitted to support the

Landlord's claim, such as quotes for moving truck rentals or the Landlord's daughter's notice to end tenancy to their current landlord, and the fact that they did not appear in the hearing or submit a written statement confirming that they are planning to move into the rental unit.

The Landlord and Agent stated that they and the Landlord's daughter felt that the tenancy agreement was sufficient to demonstrate that the Landlord's daughter is moving in, and that they contacted the Tenant's Advocate in advance of the hearing to inquire what documents the Tenant and the Advocate would find sufficient to demonstrate that the daughter is moving in, and the Advocate refused to provide them with any information. In support of this testimony the Agent pointed to an email in the documentary evidence. The Agent also stated that the Landlord's daughter was unavailable to attend the hearing due to work and COVID-19.

### Analysis

In the hearing the tenant acknowledged receiving the Two Month Notice off their door on February 19, 2020. As a result, I find that they were served with the Two Month Notice on this date.

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that when a tenant disputes a notice to end tenancy, the onus to prove the validity of the notice to end tenancy falls to the landlord.

In the hearing the Tenant and their Advocate alleged that the Two Month Notice has not been served in good faith, stating that the Landlord has ulterior motives to end the tenancy, such as avoiding their obligations under the *Act*, wanting to renovate and repair the unit while it is vacant, and wanting to re-rent the unit for an increased rent amount. The Tenant and their Advocate also alleged that the Landlord has a history of trying to end the tenancy, and as a result, the Two Month Notice should be cancelled on the basis that it was not served in good faith.

Policy Guideline 2A states that a claim of good faith requires honest intention with no ulterior motive and that when the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith. Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It also 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 *Act* or the tenancy agreement.

As a result of the above, I therefore find that the onus is on the Landlord to demonstrate that their daughter plans to occupy the rental unit for at least 6 months and that they have no other ulterior motive for serving the Two Month Notice and ending the tenancy.

In my mind, a finding that a landlord has not acted in good faith requires more than the mere possibility that the landlord *could* have an ulterior motive for ending the tenancy. It requires me to be satisfied that it is more likely than not, that the landlord either does not intend to do what is stated on the notice to end tenancy, or has an ulterior motive for ending the tenancy, or both. Although the Tenant and their Advocate argued that the Landlord has not acted in good faith in serving the Two Month Notice, for the following reasons, I do not agree.

Although the Tenant and the Advocate pointed to a previous 10 Day Notice as evidence that the Landlord has previously sought to end the tenancy and therefore has an ulterior motive, a copy of the decision rendered by the Branch in relation to that 10 Day Notice was submitted for my consideration. In reviewing that decision, I note that the parties settled, and that the Landlord voluntarily withdrew the 10 Day Notice. As a result, I am not satisfied that the Landlord was simply seeking to end the tenancy by serving the 10 Day Notice as alleged by the Tenant. Further to this, I note that the tenancy continued for almost 12 full months from the date of that decision to the date the Two Month Notice was served. As a result, I am not satisfied that the issuance of the 10 Day Notice is related to the issuance of the Two Month Notice before me for review.

Although the Tenant and their Advocate argued that the Landlord's daughter could reside with the Landlord, instead of occupying the Tenant's rental unit, I find that the Landlord is entitled to serve a Two Month Notice under the *Act* for the purpose of having their close family member occupy the rental unit and that the Landlord is under no obligation to move their daughter in with them or consider alternate living arrangements for their daughter in order to accommodate the Tenant.

While the Tenant and their Advocate suggested that the Landlord intends to re-rent the rental unit at a higher rate or that they intend to renovate the rental unit at a reduced cost to themselves after the Tenant vacates, I find that these are merely suggestions unsupported by any documentary or other evidence before me. The Landlord and Agent stated that the rental unit will be occupied by the Landlords daughter and submitted a tenancy agreement signed by both the Landlord and their daughter, stating that the

Landlord's daughter will occupy the rental unit effective May 1, 2020, at a monthly rent amount of \$0.00, which I find demonstrates to my satisfaction, that the Landlord neither intends to renovate the rental unit or re-rent it at a higher rent amount.

The Agent requested that I draw an adverse inference from the fact that the Landlord's daughter did not appear in the hearing or submit documentary evidence which the Tenant and Advocate find sufficient. However, the Landlord's obligation under the *Act* is to satisfy me, as the arbitrator, that the notice to end tenancy is valid and has been served in good faith; they are not obligated to submit a particular set of documents or to have the Landlord's daughter appear in the hearing if the Landlord is otherwise able to satisfy me of the validity of the Two Month Notice. I accept the testimony of the Agent that the Landlord's daughter was unavailable to attend the hearing due to COVID-19 and work obligations and that they felt no obligation to submit additional documentary evidence as they believe the tenancy agreement with the Landlord's daughter is sufficient. As a result, I have drawn no adverse inference against the Landlord.

Although the Tenant and the Advocate argued that the Landlord has served the Two Month Notice in order to avoid obligations under the *Act* to repair and maintain the rental unit, I am not satisfied that this is the case. The Landlord submitted documentary evidence that they recently replaced a stove in the Tenant's rental unit, which I find demonstrates that the Landlord is making efforts to repair and maintain the rental unit and denied any knowledge of mold issues in the rental unit at the time the Two Month Notice was served. I also do not find the fact that the Landlord has not painted the rental unit or had the flooring replaced during the 15 years that the Tenant has occupied the rental unit demonstrates that the Landlord has served the Two Month Notice in order to avoid these obligations under the *Act*.

Based on the above, I find that the Landlord has satisfied me, on a balance of probabilities, that their daughter intends in good faith to occupy the rental unit and that there are no ulterior motives for the issuance of the Two Month Notice. As a result, I dismiss the Tenant's Application seeking cancellation of the Two Month Notice without leave to reapply.

As the Two Month Notice is signed and dated, contains the address for the rental unit and an effective date for the notice, as well as grounds for ending the tenancy and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the Two Month Notice, April 30, 2020, has passed, the Order of

Possession will be effective at 1:00 on May 31, 2020, after service of the Order on the Tenant.

If the Tenant has not already been provided with one month's free rent, I order that the Landlord provide the Tenant with compensation equal to one month's rent by the effective date of the Order of Possession, May 31, 2020. If the Tenant has already been provided with one month's free rent or compensation equal to this amount, but has not paid any rent owing for the current month, I order that rent for the current month be paid.

The parties should be aware that section 51 (2) of the *Act* states that if 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 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, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement, unless they are excused from doing so by an arbitrator with the Branch, pursuant to section 51 (3).

### Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. on May 31, 2020**, after service of the Order on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and 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 7, 2020

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Residential Tenancy Branch