



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 117885 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNL

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49.

RD ("landlord") represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

The tenant confirmed receipt of the 2 Month Notice dated July 31, 2020, which was served to him by way of placing the notice in his mail slot. In accordance with sections 88 and 90 of the *Act*, I find that this document was deemed served to the tenant on August 3, 2020, 3 days after service.

### **Issues(s) to be Decided**

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### **Background and Evidence**

This month-to-month tenancy began on September 1, 2009, with monthly rent currently set at \$1,400.00, payable on the first of every month. The landlord collected a security

deposit in the amount of \$675.00, which the landlord still holds. The tenant resides in one of the units in this fourplex owned by the landlord, which is a corporation.

The landlord issued the 2 Month Notice dated July 31, 2020 for the following reason:

- The landlord that 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 landlord provided the following background for why they had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as the shareholders in the corporation, RD, DL, and NL, are facing financial hardship, and after consulting with their advisors, they decided to move out of their current homes into the fourplex. Shareholder RD and his family placed their home for sale on March 2020, and sold the home on August 27, 2020. The landlord provided a copy of the Contract of Purchase and Sale in their evidentiary materials. RD and his family plan to reside in two of the other units. DL and NL reside in a different home, which they had decided to rent out as of November 1, 2020. The landlord provided a copy of the residential tenancy agreement for a month-to-month tenancy, dated and signed August 15, 2020. DL and NL plan to occupy four bedrooms which consist of the applicant's unit, and another unit in the fourplex.

The landlord had approached the tenant with a proposal to sign a Mutual Agreement to End Tenancy, which the tenant did not agree to. On July 31, 2020, the landlord formally served the tenant with the 2 Month Notice. Another tenant in the fourplex was also served with a 2 Month Notice. The tenant disputed the 2 Month Notice and is awaiting a hearing scheduled for September 25, 2020.

The landlord submitted a copy of a statement from their realtor confirming that he advised the landlord on their holdings. The landlord also submitted estimates dated September 9, 2020 for work that would be completed in order for the shareholders and their families to move in.

The landlord testified in the hearing that they had just acquired a contract to build a private school in the municipality, and residing in the fourplex would allow them to remain nearby.

The tenant questioned the good faith intentions of the landlord as the landlord had recently brought a proposal for development plans with the fourplex to city council. The tenant testified that the landlord had also informed him that the plan was for the fourplex

to house workers from another province. The tenant is concerned about the changing reasons provided by the landlord for ending the tenancy. The tenant also questioned the landlord's true financial situation considering the various holdings of the landlord, and why the shareholders chose this particular fourplex to occupy considering the age and condition of the building. The tenant testified that the fourplex required considerable repairs, including a ceiling that was caving in due to a leaky roof. The tenant testified that this was a below-market rental property, and the landlord preferred to redevelop rather than perform repairs and maintain the property, which is supported by their proposal to city council.

The landlord does not dispute that they had brought to preliminary proposal to city council, and that they had long-term plans to revitalize the heritage building. The landlord testified that they had planned to re-visit this plan in three to four years, but have no plans in the immediate future to act on this proposal.

The landlord cited the rapidly changing financial situation due to the pandemic, and the unfortunate circumstances that forced the shareholders to sell and rent out their homes in order to move into the smaller duplex. The landlord denies that they had ever informed the tenant that they would be housing workers, with the exception of assisting the site coordinator by providing housing for three to four months until they find permanent housing.

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### **Analysis**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Subsection 49(4) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if 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.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch*

*may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”*

Although the landlord stated that they had issued the 2 Month Notice in order for the shareholders and their families to occupy the suite, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this notice. The tenant gave undisputed sworn testimony that the landlord had made a proposal to city council about redeveloping the property. Furthermore, the tenant questioned why the landlord would select the fourplex considering the fact that the shareholders may have other options. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The landlord testified that the main reason that the shareholders would be moving into the fourplex was financial. The landlord did provide documentation to support that consultation with their realtor, as well as documents to support the sale of one of their homes and rental of the other. The landlord also provided estimates for work that would be completed in order for the families to move in.

Despite the landlord's testimony and documents submitted for this hearing, I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. I find that the tenant had raised the question about why the shareholders would choose to live in the fourplex when the landlord could have explored other options, including liquidating other assets. I have considered the evidence and testimony provided by both parties, and I note that both estimates provided in the landlord's evidentiary materials are dated September 9, 2020, over a month after the 2 Month Notice was served on the tenant, and a month after the tenant had filed their application to dispute this 2 Month Notice. This raises significant doubt about the landlord's testimony that the shareholders would be moving in for financial reasons as the estimates were not obtained until much later, and after the tenant had filed his application disputing the 2 Month Notice.

Furthermore, although I do not doubt the landlord's testimony that their decisions to sell and rent out their current home are financially motivated, I am not satisfied that the

landlord had provided sufficient evidence to support how moving into the fourplex would be the most financially feasible option, especially considering the repairs required before the home can accommodate both families. I find the tenant raised questions as to the true intention of the landlord, especially considering that the tenant is paying below market rent, and significant repairs such as the leaky roof remain unaddressed by the landlord.

I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenant to permanently vacate the fourplex in order for the shareholders to move in. Accordingly, I allow the tenant's application to cancel the 2 Month Notice dated July 31, 2020. The tenancy is to continue until ended in accordance with the *Act*.

### **Conclusion**

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated July 31, 2020, is cancelled and is of no force or effect. This tenancy continues 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: September 22, 2020

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Residential Tenancy Branch