



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NECHAKO RIVER RANCH LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNL, FFT

### **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 (the 2 Month Notice) pursuant to section 49;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 21, 2020. Both parties also confirmed the landlord served the tenants with the submitted documentary evidence in person on September 26, 2020. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

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

Are the tenants entitled to an order cancelling the 2 month notice?

Are the tenants entitled to recovery of the filing fee?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants confirmed that the landlord served a 2 month notice to end tenancy issued for landlord's use dated August 3, 2020. The stated effective end of tenancy is October 31, 2020. The stated reason for the notice is:

*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 spouse).*

*The child of the landlord of the landlord's spouse.*

*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 tenants provided written details which states,

*Landlord has numerous outstanding obligations, including several repairs to the unit and obligations agreed to in a previous dispute resolution. There is also significant evidence to suggest there are ulterior motives for the eviction notice- Landlord attempted to evict the Tenants 7 months prior (subsequently cancelled via dispute resolution) and has engaged in unscrupulous behaviour.*

[reproduced as written]

The landlord clarified that the named company is a family farm owned by the landlord, A.D. The landlord's agent, P.D. is the son of the owner.

The tenants clarified that they question the landlord's intent to have her son occupy the rental unit because the landlord had previously tried to have them evicted with a 1 month notice which was cancelled in another dispute resolution hearing approximately 7 months previously. The tenants also argue that the "main house" is unoccupied by the owner. The tenants stated that both the owner and the son both reside in the lower mainland. The tenants also argue that they are waiting for outstanding obligations by the landlord to the rental property. The tenants stated that there is an unresolved water issue and a hole in the roof that the landlord agreed to fix.

The landlord stated that they are currently residing in his mother's home (the main house) but intend to occupy the "rental" as his home for him, his spouse and children. The landlord stated that his home in the lower mainland was sold as per a submitted

copy of 2 month notice to end tenancy dated August 30, 2020 with an effective end of tenancy date of October 31, 2020. The landlord has submitted a copy of the “sold” listing for his home by the owner. The landlord, P.D. intends to move into the “rental” home and occupy with his family on a full time basis. The landlord stated that he needs to oversee the family home/business and that the “rental” will provide his family with a separate home from when his mother visits the “main” house. The landlord did not want to share and occupy the same space with his mother. The landlord stated that the tenant’s outstanding issues have been resolved through the dispute resolution process. The landlord stated that there is no current water issue as the tenant was provided with a filter system. The landlord stated that the hole in the roof issue was just dealt with 1 week prior in another hearing and the landlord had consented to repair it as soon as possible. The landlord is waiting for access to a lift to repair the hole.

### Analysis

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, both parties confirmed the landlord served the tenant with a 2 month notice for landlord’s use of property dated August 3, 2020. Both parties confirmed the contents of the notice.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

The tenants have argued that they question the landlord’s intent to have her son occupy the rental stating that a previous notice to end tenancy was just cancelled in a previous hearing.

Further 4 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* “2. Good Faith Requirement when Ending a Tenancy” helps explain this “good faith” requirement:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...

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 they do not have an ulterior motive for ending the tenancy.

The landlord has provided undisputed affirmed evidence that his mother is the sole owner of the named landlord and that he and his family intend in good faith to occupy the rental. The landlord provided undisputed evidence that his home in the lower mainland was sold as per the copy of the 2 months' notice and a copy of the sold listing by the owner. The landlord stated that it was his intent to operate the family home/business. The landlord stated that the "main" house was his mother's home and that he did not want to live with her when she visited.

Although the tenants have argued that another issue is that the landlord has outstanding issues to resolve for his tenancy, I find on a balance of probabilities that the landlord has provided sufficient evidence to satisfy me of his intent to occupy the "rental" home as per the notice to end tenancy. On this basis, the tenants' application to cancel the 2 month notice is dismissed. The 2 month notice dated August 3, 2020 is valid.

Pursuant to Section 55 of the Act, the landlord is granted an order of possession to be effective on October 31, 2020 as per the 2 month notice dated August 3, 2020.

### Conclusion

The landlord is granted an order of possession.

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: October 06, 2020