



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNL-MT, FFT, RR, PSF, OLC

### Introduction

In this dispute, the tenant seeks various relief under sections 49, 62, 65, and 72 of the *Residential Tenancy Act* (the “Act”).

The tenant filed an application for dispute resolution on September 1, 2020 and a dispute resolution hearing was held, by way of teleconference, on Thursday, October 15, 2020 at 11:00 AM. The tenant, the tenant’s mother, and the landlord attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. While the landlord submitted evidence consisting of a one-page PDF letter a day before the hearing – which is not in compliance with the *Rules of Procedure* – the tenant explained that she had an opportunity to review the letter. Given this, I have admitted the landlord’s correspondence into evidence.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the preliminary issue and the issues of this application.

### Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenant’s application, I find that the claims other than the application to dispute the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) to be the primary, and most pressing claim. The most important matter that must be dealt with in this application is determining whether the tenancy will continue. This was explained to the tenant and the parties, who indicated their understanding.

All of the tenant's claims, therefore, other than the claim for an order setting aside the Notice pursuant to section 49 of the Act, and the claim for recovery of the filing fee under section 72 of the Act, are dismissed with leave to reapply.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy in this dispute began in August 2012, and monthly rent is \$1,600.00. (There is currently, according to the parties, a reduced rent; however, given that this aspect of the dispute is not relevant to the above-noted issues, I will not reproduce evidence related to the reduced rent in this decision.)

On August 28, 2020 the landlord served the tenant with the Notice, in person. The landlord testified that she served all four pages of the Notice, whereas the tenant testified that she was only served the first two pages of the Notice. A copy of the Notice was submitted into evidence.

The landlord testified that the reason why the Notice was served is that the landlord's daughter is to occupy the rental unit. The rental unit (which a house) was recently sold, and the new owner obtained the landlord's services to put the Notice into effect. It should be noted that the new owner is a limited liability corporation with one principle.

That principle (A.T.) authored a letter dated August 14, 2020 in which they ask the landlord (G.S.) to "Please provide notice to vacate to the current renter of the house at [address of rental unit] as my daughter intends to move in and occupy the property." A copy of the letter was submitted into evidence by the landlord. I asked the landlord how soon the new owner intends to have their daughter move in, to which the landlord answered, "almost right away."

In her testimony the tenant explained that the previous owners assured the tenant that if they ever sold the property that the tenant would not have to move. The tenant also remarked that the new, present owner also owns the property next door. Further, she testified that initially, she was told that it was a husband and wife who would be moving into the rental unit, then, later, she was told that the daughter will be moving in.

On August 3, 2020, the tenant testified that the selling realtor ("Gary") and the new owner (A.J.) were heard, by the tenant, having a conversation outside the house. They were having a conversation in which the new owner was heard to remark that they wanted to tear the property down. This conversation occurred just before the sale.

In her final submissions the landlord commented that she has no relationship with the realtor and works independently for the landlord, from whom she receives instructions. As to the conversations mentioned by the tenant, the landlord testified that "I have no idea who said what, when, and where." She explained, however, that she certainly has empathy for the tenant and her family, but that the Notice was served correctly and that everything was done in good faith.

In her final submissions the tenant and her mother spoke briefly of the upheaval that would be caused by an eviction, and of the absence of available rental housing.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

The Notice was issued under section 49(4) of the Act which states that

A landlord that is a family corporation 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.

In this dispute, the landlord (who, it should be reiterated, acts as agent for the owner of the property) testified that the Notice was issued in good faith.

The tenant disputes this, and drew my attention to (1) the changing reasons purportedly given by the new owner about moving into the house, that is, a husband and wife moving in to the daughter moving in, and, more determinative, (2) a conversation between the realtor and the new owner in which the new owner expressing a desire to "tear the property down."

In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the 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 (see *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 legislation or the tenancy agreement. In some cases, past conduct of a landlord is indicative of, or may call into serious question, whether a landlord is acting in good faith in a present case. Further, 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.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, the onus is on the landlord to prove that the new owner has no other ulterior motive when they issued the Notice.

While the landlord testified that the new owner wants to move their daughter into the rental unit (and a letter from the new owner speaks to this intention), I heard no first-hand evidence from the new owner himself. I heard no explanation from the purchaser as to why their position changed from a husband-and-wife-occupancy to a daughter-only-occupancy, and, more crucially, no explanation about the conversation regarding tearing down of the property. Moreover, the fact that the new owner also owns the adjacent property raises serious questions as to their intentions. It should be noted that the landlord herself has, or had, no knowledge of who said what and where.

When viewed in its entirety, the landlord’s (that is, the new owner’s) explanation lacks an air of reality. What is more likely, I find, is that the owner is simply interested in developing the property in a manner that is inconsistent with the purpose for which the Notice was issued. Therefore, I am not satisfied on a balance of probabilities that the landlord, under the instructions of the purchaser and new owner, issued the Notice in good faith.

Given the above, I find that the landlord has not established that the Notice was issued in good faith and that the owner intends to occupy the rental unit as described.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant is entitled to an order cancelling the Notice. The Notice dated August 28, 2020 is hereby cancelled and of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenant was successful in her application, I grant her claim for reimbursement of the filing fee.

In satisfaction of this award the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment of her choosing.

#### Conclusion

**I order that the Two Month Notice to End Tenancy for Landlord's Use of Property, dated August 28, 2020, is hereby cancelled.**

This Decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: October 15, 2020

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Residential Tenancy Branch