



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, RR, OLC, FFT

### Introduction

The tenant applies to cancel a two month Notice to End Tenancy for landlord use of property received October 9 or 10, 2020. He also seeks a compliance order and a rent rebate/monetary award.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The compliance order the tenant seeks is in regard to a handwritten, single page notice to end the tenancy that the landlord issued to him in September. He seeks to have the landlord give him a Notice to End Tenancy in the proper form. This the landlord has done by issuing the two month Notice in question. The tenant has amended his claim accordingly to challenge the two month Notice. He need not challenge the landlord's handwritten notice. The need for a compliance order has been made moot by the issuance of the formal, two month Notice.

### Issue(s) to be Decided

Does the landlord have a good faith intention that she or a close family member will occupy the rental unit? Is the tenant entitled to a rent reduction for the condition of his rental unit?

### Background and Evidence

The rental unit is a one bedroom basement suite in the landlord's house. There is another, two bedroom suite on the same level, rented to others. The landlord and her family live on the two levels above.

There is no written tenancy agreement. The tenancy started in March 2020. The monthly rent is \$875.00. The landlord holds a \$450.00 security deposit.

The parties seem to have had a pleasant relationship until September 2020.

Perhaps as the result of a neighbour's complaint, a local government bylaw officer informed the landlord of a desire to inspect the tenant's suite in September. There is no argument but that the tenant's suite is an "illegal" suite in contravention of the local government laws restricting residential homes to just one secondary suite. The tenant's suite is a third suite in the house.

In anticipation of the inspection the landlord desired to move the stove out of the suite. It would appear that the local government considers the presence of a stove to be an indicator that the suite is a self-contained one.

Prior to the inspection the tenant had become aware of the illegality of the suite. It was he who moved the stove out to another part of the property. He had moved the refrigerator out some time prior to September.

The tenant says the landlord also wanted him to hide some wiring in the unit but he declined as he was not an electrician.

The bylaw officer inspected the suite and, it appears, declared it to be in contravention of the zoning bylaw. After various correspondence with the landlord, the bylaw officer, on behalf of the local government, directed the landlord to decommission one of the two rental suites by December 31, 2020. The other suite is a "built in" two bedroom and so the tenant's suite was the obvious one to go.

It appears there might have been a verbal agreement between the parties that the landlord would issue a one month "notice" to end the tenancy and the tenant would move out. The landlord thus gave the tenant a handwritten letter that stated her parents would move into the suite. It was this "notice" the tenant originally challenged with this application.

The landlord then issued the two month Notice to End Tenancy in the proper form and served it on the tenant. The tenant amended his claim to challenge that Notice.

The grounds given in the Notice are that the “the father or mother of the landlord or the landlord’s spouse” would be occupying the rental unit.

The landlord’s parents live with her on the upper two floors of the house at present. They are both 73 years old. The landlord says her father has a heart condition and a bad knee. Climbing the stairs between the main floor and bedroom level of the upper portion is a risk to his health and so the basement suite, being at ground level, would be better for him.

She files a doctor’s letter saying much the same thing. The tenant denies receiving the doctor’s letter in his evidence package from the landlord.

The tenant indicated that in disputing the two month Notice, he wanted to ensure that the effective date was a full two months away (the Notice has an effective date of December 1, 2020) and that he was ready to move out by then. After some discussion, including the fact that s. 53 of the *Residential Tenancy Act* (the “RTA”) determines that a Notice with an effective date that is too soon automatically corrects itself, the tenant determine that he wanted to pursue the actual cancellation of the Notice, as his applicant indicates.

The tenant says the landlord’s father is an active man, out raking leaves and the like.

He says he removed the fridge long ago because it was dirty, mouldy and the plastic in the freezer portion had melted.

He says his stove never worked and only two of its four elements were functional.

He was very busy with work when he rented the suite and accommodation was very difficult to come by. He rented without doing a full inspection (the landlord did not conduct the mandatory inspection and prepare the mandatory condition report required by law either). During the first few months of the tenancy he was not home much as his work kept him very busy.

## Analysis

### The Notice

The *RTA*, s. 49(3) authorizes a landlord to end a tenancy with two months notice “ if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

Residential Tenancy Policy Guideline 2A, “Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member” states:

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.

It is evidence on the facts before me that the primary reason for the two month Notice was to comply with the local government order that the suite be decommissioned by December 31, 2020. Mr. MS for the landlord admitted at hearing that it was the primary reason.

I find there is an ulterior motive for the two month Notice. That motive, the primary motive, is to avoid the penalties imposed by the local government for the landlord having an unlawful suite in her home.

In any event, the evidence to support the idea of the assertion that the landlord's father needs to move from upstairs to the basement suite is not convincing, even taking into account the doctor's letter. I find it unlikely that the father would be confining himself to the basement. Rather, he would be up and down the interior stairs between the living areas, likely for meals and almost certainly for socializing during the day or evenings.

I cancel the two month Notice to End Tenancy in question. The landlord is free to issue another Notice. She was directed to s. 47(1)(k) of the *RTA*, in that regard.

### The Tenant's Claim for a Monetary Award/Rent Rebate

The evidence shows that the tenant had not formally notified the landlord of any problems with any of the appliances in the suite until this application. The landlord

should note that if a rental suite contains a stove or a fridge, they are expected to be working unless the parties specifically agree otherwise. There is no such agreement here.

I dismiss the tenant's claim for a rent rebate/monetary award. However, the landlord is now on formal notice that the tenant claims the appliances are faulty. She should attend to her obligations as a landlord accordingly and the tenant is free to re-apply if she fails to do so.

### Conclusion

The two month Notice to End Tenancy is cancelled.

The remainder of the tenant's claim is dismissed.

The tenant is entitled to recover the \$100.00 filing fee for this application and I authorize him to reduce his next rent by \$100.00 in full satisfaction of the fee.

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: December 10, 2020

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Residential Tenancy Branch