



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMBASSADOR INDUSTRIES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Code: CNL

### Introduction

The tenant has applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 49 of the *Residential Tenancy Act*.

Both parties, including the tenant's advocate, attended the hearing on January 18, 2021, which was held by teleconference. No issues of service were raised by the parties.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession of the rental unit?

### Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on May 1, 2015 and the monthly rent is \$966.86. There is a security deposit of \$440.00 currently in trust with the landlord. The rental unit is a one-bedroom apartment on the second floor of a fifty-unit apartment building. A copy of the written tenancy agreement was submitted into evidence.

The landlord testified that they served the Notice on October 19, 2020. A copy of the Notice was in evidence that the explained that the Notice was given so that his son (and his son's girlfriend) could move into and occupy the rental unit.

While there was an available ground floor rental unit available, the landlord explained that his son is an electrician with thousands of dollars worth of equipment and computers for work. The son is wary of being on a ground floor apartment due to the higher risk of theft that this entails. The son is only willing to occupy a rental unit on the second or third floor. He currently resides in a bachelor apartment on the same floor as the tenant.

Under cross examination by the tenant's advocate, the landlord testified that there are, or were, two available rental units, but that these were both on the first floor. There is recently an empty rental unit (#307), but that this is to undergo full renovations and, as briefly explained by the landlord, his son would not be able to afford the rent on a fully renovated apartment.

In closing submissions, the tenant's advocate argued that the landlord did not issue the Notice in good faith. They argued that there are other, comparable and available rental units in the building that the landlord's son could move into. There are secure storage facilities available that the landlord's son could store his equipment. Further, the tenant, if he is to leave, ought to be given an opportunity to move into the ground floor apartment, if it is available. She reiterated that the burden is on the landlord to prove that they issued the Notice in good faith.

In response, the landlord testified that they have had a couple of break-ins with the storage lockers and that they are not fully secure. Moreover, he submitted that he believes he issued the Notice in good faith, gave the tenant sufficient time, and that his son needs somewhere to go.

### 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.

In this case, the landlord issued the Notice under section 49(3), which states that a "landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the

rental unit.” Here, the landlord’s son and his son’s girlfriend intend to occupy the rental unit. The landlord’s son currently lives in a bachelor-sized rental unit, and with the girlfriend now in the picture, the son needs a larger rental unit.

The tenant’s advocate disputes that the landlord intends in good faith for his son to occupy the rental unit.

Good faith is a legal concept and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the court found that 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 tenancy, or, as in this case, the Agreement. When the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636).

In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. In this case, there is evidence that there were other rental units available in the building. However, these other available rental units were (a) either on the ground floor, or (b) about to undergo full renovations. Ground floor apartments cannot, I find, and despite what the tenant’s advocate argued, be considered comparable units. There is, quite simply, no evidence that the landlord issued the Notice for any ulterior motive or other purpose for ending the tenancy other than for his son to occupy the rental unit. There is no evidence that there is any “bad blood” between the parties (that often gives rise to these disputes), nor any evidence of any kind to suggest that the landlord issued the Notice for ulterior reasons.

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 landlord has met the onus of establishing that they truly intend for the landlord’s son to occupy the rental unit at the end of the tenancy.

Given the above, I find that the landlord has met the onus of proving that they are acting honestly, and in good faith, they intend for their son to occupy the rental unit after the tenant has vacated the rental unit. As such, I uphold the Notice, dismiss the tenant’s application, and grant the landlord an order of possession of the rental unit.

Conclusion

I dismiss the tenant's application.

I grant the landlord an order of possession, which must be served on the tenant. The Order shall go into effect at 11:59 PM on February 28, 2021. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia, if deemed necessary.

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

Dated: January 18, 2021

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Residential Tenancy Branch