



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on February 23, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the Notice).

The Landlord was present at the hearing with her friend and her father (collectively referred to as the Landlord). The Tenant was present at the hearing with her friend and her advocate (collectively referred to as the Tenant). Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's Notice of Hearing and documentary evidence and did not take issue with the service of these documents. The Tenant confirmed receipt of the Landlord's evidence package. I find both parties sufficiently served their documentation for the purposes of this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

Both parties agree that the tenancy started on August 1, 2020, and is currently on a month-to-month basis. Monthly rent is set at \$1,200.00 and is due on the first of the month, and the Landlord holds a security deposit of \$600.00.

The Tenant acknowledged getting the Notice on November 25, 2020. A copy of the Notice was provided into evidence and it lists the following grounds to end the tenancy:

*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 individual's spouse).*

The Landlord also noted that the unit will be occupied by her and her children as part of, and in addition to, their living area upstairs. The Landlord explained that she lives upstairs with her 15-year-old daughter, and her 17-year-old son. The Landlord stated that due to the major changes that have been imposed on her life, she and her children now require more space. More specifically, the Landlord explained that since the Tenant started renting the unit, the pandemic has worsened, and there are more restrictions, which increase the need for space at home. The Landlord explained that she works from home, part time, and requires additional office space. The Landlord explained that she has had to temporarily move her son into her bedroom and use his bedroom for her office, although his room is too small.

The Landlord also stated that there have been significant changes to how her children attend school. The Landlord stated that both of her children are in high school and much of the curriculum has shifted online, and from home. The Landlord explained that she wants to have extra space for her children to use video conferencing for school that is not in the corners of their bedrooms. The Landlord further stated that there have also been changes to her son's extra-curricular judo training, and in the fall, various Provincial health orders were imposed which make it hard to train and practice. The Landlord explained that her son is a "carded" athlete and will be competing in the Olympics soon.

The Landlord stated that over the past few months, her son has had a difficult time trying to find facilities and classes to continue his judo training. As a result, she is seeking to take back the use of this rental suite so that she can have more space for her son to practice judo. The Landlord also stated that she could use some extra space for

her daughter to practice her music. The Landlord stated that she wants her son to be able to do online judo courses and have more space to do so.

The Tenant stated that she believes the Landlord is not acting in good faith, and has an ulterior motive (to end the conflict with the Tenant). The Tenant explained that she has multiple medical issues, including extreme chemical and scent sensitivity. This makes it imperative for the Tenant to live in a scent free environment, and to limit her exposure to irritants that would not affect an average person. The Tenant stated that she has had negative interactions with the Landlord for months leading up to the issuance of the Notice.

The Tenant pointed to the written complaint she gave to the Landlord on or around September 4, 2020, which outlines a few things she wished to have fixed and addressed, including a couple minor repairs, and some scent related complaints. The Landlord stated that all of these issues were addressed by September 24, 2020, so this is not an ongoing concern.

The Tenant provided copies of text messages over the past few months, dating back to August 2020. The Tenant pointed out that she and the Landlord began having disagreements about several things as far back as September, when the Landlord reprimanded her for using her trampoline in the back yard. The Landlord appears to have taken steps to use different laundry detergents so that the Tenant would not react to the scents as early as September 2020. The Tenant expressed that even though the Landlord took steps to use a scent free laundry soap, it was still not sufficient.

The Tenant, via text message, specified several rules and requests for the Landlord to follow when accessing shared spaces in the rental unit, such as laundry areas. The Tenant's reactions to the various soaps, scents and aromas in and around the rental unit appears to have escalated throughout September and October 2020, as she found herself reacting to certain products, and making demands to the Landlord. The text messages also indicate the parties had a negative interaction regarding the Tenant using the back yard. The Tenant also provided a text message she wrote to the landlord whereby she threatened to go to the RTB if the Landlord did not separate her "chemicals" from her firewood storage.

The Tenant's text messages show that she acknowledged she has mental health problems, and PTSD. She apologized for her cannabis smoking and her requests for repairs. Following this apology, the Tenant continued to contact the Landlord about scents that were bothering her, throughout November, some of which the Landlord had

no idea about. Around November 15, 2020, the Tenant texted the Landlord explaining that she was going to have the inside front hall of the house treated with ozone to get rid of smells. The Tenant advised that the Landlord ought to wait until the ozone dissipates before entering the area. The Landlord took issue with the Tenant's plans to ozonate the hallway area and was concerned about the safety of that type of treatment.

The Tenant provided a copy of an email from the Landlord dated October 5, 2020, whereby the Landlord complained of Tenant's marijuana smoke, despite the unit being non-smoking. The Landlord also raised several other issues which she was unhappy about, and suggested that the Tenant move out.

The Landlord stated that she issued the Notice because she requires more space, not because of any dysfunction with the Tenant.

The Tenant stated she never hears any musical instruments being practiced, so she doubts the Landlord's children need space for music. The Tenant also stated that the ceiling in her rental unit isn't very high, and she doubts it is high enough for the Landlord's son to practice judo in. The Tenant stated that the Landlord bears the burden to prove that they do not have an ulterior motive, and in this case, the Tenant opines that it is clear the Landlord is trying to end the conflict, rather than end the tenancy for her use. The Tenant explained that sometime in mid-November, the Landlord called the police on her because the Landlord noticed that she had gone ahead and ozonated the rental unit without consent. A copy of an email supporting this was provided into evidence. Following this, the Tenant had called the police on the Landlord around November 19, 2020, for a few other issues relating to the rental unit and the behaviour of the Landlord. The Tenant feels that getting this Notice a mere 6 days later is highly suspicious in terms of good faith intentions.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that she intends in good faith to occupy the unit (as she has indicated on her 2-Month Notice).

I acknowledge that there has been degradation in the relationship between the Landlord and the Tenant. The Tenant is alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because their relationship has soured.

Once the Landlord's good faith intentions are called into question, the burden of proof rests with the Landlord to demonstrate that she, in good faith, intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2A states the following:

**B. GOOD FAITH**

*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.*

*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 RTA and MHPTA or the tenancy agreement.*

*[...]*

*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.*

I have considered the testimony and the evidence on this matter, in totality, and I note the Landlord is seeking to end this tenancy because she states that she needs the extra space to support her family's needs, particularly during this pandemic period. I accept that, generally, in this current pandemic there are expanded uses and needs for space at home which could support the Landlord's need for a bigger living space. However, I note the good faith intentions of the Landlord have been called into question by the Tenant, given the escalating dysfunctions and disputes between the parties in the weeks, and months, leading up to the issuance of the Notice.

Although I accept there were Provincial Health Orders which expanded in severity just before the Notice was issued, which could support the Landlord's need for more space, I find the timing of the Notice, given that it was issued after escalating conflict, and recent police involvement, is suspicious. As noted above, since the good faith intentions of the Landlord has been called into question, the Landlord bears the burden of proof to show that she truly intends to occupy the rental unit, and that there is no ulterior motive for ending the tenancy.

In this case, the Landlord must demonstrate that the escalating conflict between her and the Tenant did not substantially contribute to her issuing the Notice. I note the Tenant provided some text message and email history, showing that she and the Landlord had a series of negative interactions starting early in the fall of 2020. It appears the Tenant had increasing reactions to different scents in and around the rental unit, and although the Landlord took steps to accommodate the Tenant on numerous occasions, it appears the Tenant's multiple chemical sensitivity added stressors to the Landlord's life, beyond what she was already experiencing from being a single parent in the middle of a pandemic.

I find it important to note the Landlord has brought up ending the tenancy at several points, prior to issuing the Notice, and for reasons other than what was listed in the Notice. In a letter she drafted around October 5, 2020, she suggested that the Tenant should move out, and highlighted numerous issues with the tenancy, and the Tenant's behaviour (including smoking, access issues, and cruel/incessant complaints and behaviour). I find this letter from the Landlord to the Tenant in early October must also be viewed within the overall context of the relationship between the parties, which appears to have significantly degraded since that time. The fact that the Tenant and the Landlord each contacted the police shortly before the Notice was issued shows the parties had reached a point of significant frustration.

Ultimately, I do not find the Landlord has sufficiently demonstrated that she did not have an ulterior motive for issuing the Notice. In this case, the onus is on the Landlord to substantiate the Notice and importantly, her good faith intentions. I find that the Landlord has not provided sufficient evidence to support her good faith intentions, especially given the pre-existing and escalating conflict, leading up to the Notice. Therefore, the Tenants' application is successful and the Notice received by the Tenant on November 25, 2020, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

### Conclusion

The Tenants' application is successful. The Notice is cancelled.

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: February 24, 2021