



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ALL CANADIAN PEOPLES FINANCE  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL

### 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.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant was accompanied by his advocate, L.H. The landlord (the named company) was represented by its agents, M.J. and V.T.T. The named landlord was represented by his agent, M.M. Extensive discussions revealed that the named company is the seller of the property with V.T.T. as its realtor and M.K. the purchaser with M.M. was his realtor.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served both of the named landlords with the notice of hearing package on March 22, 2021 via Canada Post Registered Mail. Both parties also confirmed the tenant served both of the named landlords with the submitted documentary evidence with the submitted documentary evidence on May 21, 2021 via Canada Post Registered Mail. Both parties confirmed the named company landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on May 31, 2021. The named landlord's agent, M.M. confirmed that no documentary evidence was served to any parties. All parties confirmed that there were no further service issues. I accept the undisputed affirmed evidence of all parties and

find that all parties were properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

At the outset the tenant's application was clarified through extensive discussions with all parties.

At 9:50am, 20 minutes past the start of the hearing continuing issues occurred where the Arbitrator was unable to clearly hear either the tenant or the named company landlord. The named landlord repeatedly confirmed that he could clearly hear everyone. Repeated attempts were made to resolve the issue through requesting all parties turn off their speakerphones were unsuccessful. An attempt was made to contact the Telus Operator where all parties waited for 5 minutes without a connection to an operator. At this time the hearing was resumed and parties were advised that we would make the best efforts to continue and an adjournment was an option if it became too difficult to continue. Both parties stated that they wished to continue.

A review of the tenant's application shows that the tenant is seeking to cancel 2 Notice(s) to End Tenancy for Landlord's Use of Property. The Notice(s) dated February 26, 2021 and March 11, 2021 both with two reasons for ending the tenancy. The two reasons on both notice(s) selected are:

The rental unit will be occupied by the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

And,

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenant disputes both notice(s) "because we do not believe the landlord or their close family intends to move into the unit." In this case the tenant argues that he does not believe the purchaser will occupy the rental unit. The named landlord's agent stated the purchaser intends to have his daughter move-in and occupy the rental property while renovations take place.

Extensive discussions with both parties resulted in the named landlord company's agent clarifying that the first notice dated February 26, 2021 had been cancelled. Further

discussions with the named company landlord clarifying that the first selection on the notice to end tenancy for landlord's use was done in error and that only the second reason was intended. The tenant when asked of this clarification that he still does not believe the purchaser intends to have his daughter occupy the rental unit.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 month notice?

#### 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.

Both parties confirmed that the named company landlord served the tenant with a 2 month notice to end tenancy for landlord's use dated March 11, 2021 with an effective end of tenancy date of June 8, 2021. The named company landlord's agent confirmed that an error occurred in the selection of the reason for the notice was made and that the reason for the notice was:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The named landlord's agent stated that the purchaser intends to have his daughter move-in and occupy the property during renovations. The named landlord's agent also referred to the submitted copy of a "Tenant Occupied Property- Buyers Notice to Seller for Vacant Possession" dated February 25, 2021 which states that the purchaser or a close family member intends in good faith to occupy the property.

The tenant questioned the named landlord's agent requesting the name of the purchaser's daughter, their current address and employment. The named landlord's agent was unable to provide any of these details.

The tenant argued that the purchaser/landlord does not intend in good faith have his daughter occupy the property. The tenant stated the purchaser is involved in real estate and according to his resume is the owner and engineer of a company involved in real estate development. The tenant argued that the property is "barely habitable" and

suffers from severe structural issues. The tenant referred to two photographs on page 24 and 26 of the tenant's evidence which depict a wood beam with many small holes a basement with exposed walls and plumbing. The tenant also argues that the building on the property was assessed at \$61,100 by BC Assessment in comparison to the building of the home of the purchaser which is assessed at \$2,092,000. The tenant argues that the purchaser occupying the property would be "below living standards".

The named landlord's agent argues that the landlord's business is in engineering and is not a developer. The named landlord stated that the value of the house/building is not relevant. The named landlord's agent argues that the wealth of the purchaser is not an issue to question. The named landlord's agent stated based upon his experience as a realtor it is very common after a purchase of a home to have either the purchaser or a family member occupy the property during renovations.

### Analysis

Section 49(5) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy that the purchaser or close family member, intends in good faith to occupy the rental unit.

I find based upon the undisputed evidence of both parties that the landlord has entered into an agreement to sell the rental unit and the purchaser has requested in writing the landlord to give a notice to end tenancy that the purchaser or a close family member intends in good faith to occupy the rental unit. In this case, the purchaser intends to have his daughter occupy the rental unit.

In this case, however, the tenant argues that he does not believe the purchaser's daughter intends in good faith to occupy the property. The tenant argues that based upon the purchaser's standard of living and the condition of the property that this would be unlikely.

Residential Tenancy Branch Policy Guideline 2A, Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states in part,

*Section 49 of the Residential Tenancy Act (RTA) allows a landlord to end a tenancy if the landlord: 1. intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit; 2. 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; 3. enters into an agreement in good faith to sell the rental unit, all conditions of the sale are satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser or a close family member intends, in good faith, to occupy the unit...*

*...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. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).*

*If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.*

*If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.*

*If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.*

*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.*

The named landlord's agent has repeatedly argued that the purchaser intends to have his daughter occupy the rental unit and that the profession and status of wealth of the purchaser is not relevant. The agent repeatedly argued that a "Tenant Occupied Property- Buyers Notice to Seller for Vacant Possession" was completed by given to the Landlord/Seller" as all of the conditions of the Sale have been met and requests the Seller to serve a 2 month notice to the tenant.

In this case, I find that I prefer the evidence of the landlord over that of the tenant. The tenant's primary argument is that the purchaser's daughter does not intend in good faith to occupy the property. The tenant has primarily provided evidence regarding the purchaser, on his occupation and the property in which he currently resides. The tenant has also argued that the named landlord has failed to provide the name, address or occupation of the daughter. Despite these arguments made by the tenant, the named landlord has provided consistent and clear evidence that the purchaser intends for his daughter to occupy the property while it undergoes renovations. I find that this is a common occurrence in the current real estate market as stated by the named landlord's agent. I find that despite the tenant's argument that the onus is on the landlord to demonstrate that he intends to have his daughter occupy the property, the tenant also failed to provide sufficient details of an argument that there is a lack of "good faith" by the purchaser. The primary elements of the tenant's arguments were focused on the purchaser and not the purchaser's daughter. I have no evidence presented before me to question the landlord/purchaser's intent to have his daughter occupy the rental property during renovations. The landlord has provided consistent and reasonable testimony throughout the dispute resolution hearing. I agree with the landlord's agent that the wealth or current residence of the landlord/purchaser should bear no relevance on whether his daughter will occupy the property. On this basis, I find that the notice to end tenancy issued for landlord's use dated March 11, 2021 is upheld. As the effective end of tenancy date has now passed, I grant the landlord an order of possession to be effective 2 days after it is served upon the tenant. The tenant's application is dismissed without leave to reapply.

### Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and may be enforced as an order of that Court.

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: July 9, 2021