



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The tenant opposed inclusion of the landlord's evidentiary material, which was received by the tenant and uploaded to the Residential Tenancy Branch automated system on July 4, 2021. The Rules of Procedure state that all evidence that a respondent wishes to rely on must be received by the applicant and by the Residential Tenancy Branch at least 7 days before the hearing. Given that the tenant has opposed inclusion of the landlord's evidence, and it was provided only 4 days prior to the hearing, I declined to consider the landlord's evidence. All evidence of the tenant has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in good faith and in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that the tenant moved into the rental unit several years ago and still resides there. Rent in the amount of \$800.00 per month was payable at the

beginning of the tenancy, which has been raised from time to time and is now \$860.00 per month, payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one side of a duplex. The landlord owns both sides, both are rented, and the landlord does not reside on the property. A written tenancy agreement exists, but a copy has not been provided for this hearing.

The landlord further testified that on April 30, 2021 the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), and a copy has been provided for this hearing by the tenant. It is dated April 30, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it states that the rental unit will be occupied by the child of the landlord or the landlord's spouse. The landlord testified that it was issued due to her daughter, who has had struggles with addiction and had to move out of her place on June 30, 2021 and was going to treatment. The landlord was up-front with the tenant to let her know that the landlord needed a place for her daughter to live. The landlord's daughter is now in a shelter for homeless people and has been since July 1. The landlord told her daughter that she would have to be 100% clear of drugs to be on the property, and if not, the landlord's son would move in, who currently lives with the landlord.

The landlord submits that it is her right to be able to have her child move in if the landlord wants to.

**The tenant** testified that the tenant moved into the rental unit in October, 2015, and rent is currently \$886.00 per month.

The landlord's honesty is lacking, having tried to sell the property previously. Further, the landlord could move her daughter into the other side of the duplex which has been renovated. The current tenants in that side of the building have been there for about 1 ½ years and pay more rent.

The Notice given by the landlord consists of 2 pages, and the 2 pages provided for this hearing are pages 1 and 3 of the 4-page form.

The landlord is a realtor, and based on the history of dealing with realtors and prospective buyers, the landlord could get more money. The tenant applied for an apartment up the road as suggested by the landlord, but the rent is \$1,600.00 per month, which the tenant cannot afford.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must establish good faith intent.

In this case, the tenant testified that the landlord served 2 pages of the Notice, which is contrary to the law, and not disputed by the landlord. A landlord must use the approved form, which currently has 4 pages.

I also refer to Residential Tenancy Branch Policy Guideline #2A – Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which 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.

It also states:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

In this case, the landlord has given a notice to end the tenancy in order for a close family member to occupy the rental unit, but is not certain which child will actually occupy it. The landlord is correct, that it is within the landlord's right to end the tenancy for a child of the landlord to occupy the rental unit, however the landlord testified that If the landlord's daughter is not clear of drugs, the landlord will move her son into the rental unit. To give such a Notice, there must be no ambiguity or uncertainty.

Since the landlord has not established certain intent, and has not served the Notice in the approved form, I cancel the Notice and the tenancy continues.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated April 30, 2021 is hereby cancelled and the tenancy continues.

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 08, 2021

---

Residential Tenancy Branch