



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding G&D WOODWARD HOLDINGS  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on April 12, 2021 (the “Application”). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated July 21, 2021 (the “Notice”).

The Tenant appeared at the hearing. The Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed receipt of the hearing package and Tenant’s evidence; however, during the hearing the Agent testified that they did not receive an advertisement referred to by the Tenant. The Tenant testified that they “guess” they did not serve a copy of the advertisement on the Landlord.

The Tenant was required to serve their evidence on the Landlord pursuant to rule 3.14 of the Rules and was required to prove service pursuant to rule 3.5 of the Rules. I was not satisfied of service of the advertisement given the testimony of both parties.

I heard the parties on whether the advertisement should be admitted or excluded pursuant to rule 3.17 of the Rules. The Agent submitted that the advertisement should be excluded because they do not have it. The Tenant submitted that the advertisement should be admitted.

I excluded the advertisement pursuant to rule 3.17 of the Rules as I found it would be unfair to consider it when I was not satisfied the Agent had seen it or could respond to it at the hearing.

The Tenant testified that they did not receive the Landlord's evidence, other than a warning letter submitted by both parties. The Agent testified that the Landlord's evidence was served on the Tenant.

The Landlord had the onus to prove they served their evidence on the Tenant pursuant to rule 3.16 of the Rules. The parties gave conflicting testimony about whether the Landlord's evidence was served on the Tenant. In the absence of further evidence supporting the Agent's testimony, I was not satisfied of service of the Landlord's evidence.

I heard the parties on whether the Landlord's evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The Tenant submitted that the Landlord's evidence should be excluded because they do not have it and do not know what it is. The Agent submitted that the Landlord's evidence should be admitted because it relates to the issues raised by the Tenant in the Application.

I excluded the Landlord's evidence, other than the warning letter, pursuant to rule 3.17 of the Rules as I found it would be unfair to consider it when I was not satisfied the Tenant had seen it or could respond to it at the hearing.

As stated above, the Notice was served after the Application was filed. I raised the issue of the timing of service of the Notice with the parties at the hearing. Both parties agreed they intended to deal with the validity of the Notice at the hearing and therefore I proceeded to hear the parties on the validity of the Notice.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Tenant testified as follows. There is no written tenancy agreement between the parties. The Tenant had a verbal tenancy agreement with the prior owner of the rental unit. The tenancy started 15 years ago and is currently a month-to-month tenancy. Rent is \$325.00 per month due on the first day of each month. The Tenant paid a security deposit but does not recall the amount.

The Agent testified as follows. There is no written tenancy agreement between the parties. The tenancy started more than ten years ago and is currently a month-to-month tenancy. Rent is \$325.00 per month due on the first day of each month. The Tenant paid a security deposit but the Agent does not know the amount.

Both parties agreed that the only issue before me is the validity of the Notice. The Notice was submitted by the Tenant. The grounds for the Notice are:

1. The rental unit will be occupied by the landlord or the landlord's close family member...
2. The landlord 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.

The Agent testified that the Notice was served July 21, 2021. The Tenant acknowledged receipt of the Notice July 22, 2021.

The Tenant did not raise an issue with the form or content of the Notice when asked.

The Agent testified as follows. The Landlord is a family corporation. They currently live in another province and are moving to BC. They have sold their businesses in the other province and their only business left is in BC in relation to the rental building. They previously visited the rental building and stayed in the second bedroom of another tenant's rental unit; however, that tenant now has a roommate so this is no longer an option. They intend to move into the rental unit. They intend to upgrade the flooring and painting in the rental unit, which will take one month, and then intend to reside in the rental unit full time.

The Agent responded to issues raised by the Tenant in the Application as follows. The Tenant asserts that the Landlord made other tenants move out so they could re-rent

their units for higher rent; however, this is not accurate as the other tenants gave notice ending their tenancies. The Tenant has been given two notices about noise complaints; however, this is not the reason the Landlord wants to end the tenancy. The Landlord wants to end the tenancy because the Agent intends to move into the rental unit.

The Tenant did not dispute that the Landlord is a family corporation when asked.

The Tenant testified as follows. They do not believe the Agent intends to move into the rental unit. The Agent could have moved into two other rental units that became available recently but did not do so. Instead, the Landlord re-rented these units for higher rent. The Agent wants the Tenant to vacate so they can renovate and re-rent the unit for higher rent which is what they did in relation to the other units.

The Tenant acknowledged that the Agent has attended the rental unit building and stayed with another tenant in another unit in the past. The Tenant did not know if a second person now lives in the other unit.

In reply, the Agent testified that the other units which became available recently were too small for the Agent to live in.

The Landlord sought an Order of Possession effective September 01, 2021.

The Tenant submitted the following documentary evidence:

- A letter from the Landlord to the Tenant about the Notice
- A warning letter from the Landlord to the Tenant about the rental unit being rented to one person only
- A noise complaint letter from the Landlord to the Tenant
- A request for a fridge replacement

The warning letter submitted by the Tenant was also submitted by the Landlord.

### Analysis

I have only considered the following ground for the Notice:

2. The landlord 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.

The Notice was issued pursuant to section 49(4) of the *Act* which states:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

The Tenant had 15 days to dispute the Notice pursuant to section 49(8)(a) of the *Act*. I accept the Tenant's testimony that they received the Notice July 22, 2021. The Application was filed in April and prior to the Notice being issued. As stated, the parties agreed to me deciding the validity of the Notice at the hearing and I have done so. I find the Tenant disputed the Notice in time.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Policy Guideline 2A states:

#### **B. GOOD FAITH**

*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.*

*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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA 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 (section 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 demonstrate the landlord is not acting in good faith in a present case.*

*If there are comparable vacant 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 dishonest motive*

Policy Guideline 50 states:

#### *Reasonable Period*

*A reasonable period to accomplish the stated purpose for ending a tenancy will vary depending on the circumstances. For instance, given that a landlord must have the necessary permits in place prior to issuing a notice to end tenancy, the reasonable period to accomplish the demolition of a rental unit is likely to be relatively short. The reasonable period for accomplishing repairs and renovations will typically be based on the estimate provided to the landlord. This, however, can fluctuate somewhat as it was only an estimate and unexpected circumstances can arise whenever substantive renovations and repairs are undertaken.*

*A reasonable period for the landlord to begin using the property for the stated purpose for ending the tenancy is the amount of time that is fairly required. It will usually be a short amount of time. **For example, if a landlord ends a tenancy on the 31st of the month because the landlord's close family member intends to move in, a reasonable period to start using the rental unit may be about 15 days. A somewhat longer period may be reasonable depending on the circumstances. For instance, if all of the carpeting was being replaced it may be reasonable to temporarily delay the move in while that work was completed since it could be finished faster if the unit was empty.***

I accept the testimony of the Agent that they intend to move into the rental unit. I find the Agent provided detailed reasons for wanting to move into the rental unit. I find the testimony of the Agent reliable and credible. There was nothing about the testimony of the Agent that causes me to doubt their testimony. I find that aspects of the Agent's testimony were confirmed by the Tenant such as that the Agent has previously stayed at the rental building with another tenant. I find that the history of the Agent staying at

the rental building tends to support the Agent's testimony that they now intend to move into the rental unit. The Agent responded to the issues raised by the Tenant and I find the responses reasonable. I find the Landlord has met their burden to prove the grounds for the Notice through the testimony of the Agent.

I acknowledge that the Tenant raised issues with the Agent's testimony that they intend to move into the rental unit; however, I find the Tenant's testimony to be unsupported beliefs and assertions rather than compelling evidence that calls into question the testimony of the Agent. The Agent explained why they did not move into other units that recently became available and I find the explanation reasonable. The evidence before me does not support that the Landlord ended other tenant's tenancies so that they could re-rent their units for higher rent. The Agent testified that the other tenants ended their tenancies and I find this testimony reliable and credible. It is not clear how the Tenant would know who ended the other tenancies. I accept that the Landlord re-rented the empty units for higher rent as the Agent did not dispute this; however, there is nothing inappropriate about the Landlord re-renting empty units for higher rent once tenants have ended their tenancies.

I acknowledge that the Landlord has the onus to prove the grounds for the Notice and I am satisfied the Landlord has done so through the testimony of the Agent which I find reliable and credible. I do not find that the unsupported beliefs and assertions of the Tenant overcome the testimony of the Agent in relation to what the Agent intends to do. In the circumstances, I am satisfied the Landlord had grounds to issue the Notice.

I note that the Agent acknowledged they intend to upgrade the flooring and paint over one month prior to moving into the rental unit. I find based on Policy Guideline 50 that the Agent is permitted to complete upgrades before moving into the rental unit. I find the one-month timeline for upgrades acceptable as this is a relatively short period of time.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

Given the above, I uphold the Notice and dismiss the Application without leave to re-apply.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlord sought an Order of Possession effective at 1:00 p.m. on September 01, 2021; however, section 49(2)(a) of the *Act* states:

(2) Subject to section 51...a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
  - (i) not earlier than 2 months after the date the tenant receives the notice,
  - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
  - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

I have accepted that the Tenant received the Notice July 22, 2021 and therefore the effective date of the Notice is automatically changed to September 30, 2021 pursuant to section 53 of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on September 30, 2021.



Conclusion

The Landlord is entitled to an Order of Possession and is issued an Order of Possession effective at 1:00 p.m. on September 30, 2021. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court 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 *Act*.

Dated: August 20, 2021

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Residential Tenancy Branch