



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on April 07, 2021 (the “Application”). The Tenants applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 25, 2021 (the “Notice”)
- To recover the filing fee

The Tenants appeared at the hearing with the Advocate. The Landlord appeared at the hearing. I explained the hearing process to the parties. 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 confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted and all oral testimony and submissions 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?
3. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The Landlord testified as follows. There is a written tenancy agreement between the parties. The tenancy started eight years ago and was a fixed term tenancy. The tenancy is now a month-to-month tenancy. Rent is \$1,090.00 per month due on the first day of each month. The Tenants paid a \$400.00 or \$450.00 security deposit.

The Tenants agreed with the above points about the tenancy agreement. Tenant C.C. testified that they moved into the rental unit in July of 2015. The Tenants testified that they paid a \$450.00 security deposit.

The Notice was submitted as evidence. The grounds for the Notice are that the rental unit will be occupied by the child of the Landlord or Landlord's spouse.

The Landlord testified that the Notice was served to Tenant C.C. in person March 25, 2021. Tenant C.C. testified that the Notice was provided March 28, 2021.

The Landlord testified as follows. Their son intends to move into the rental unit. There is a letter from their son in evidence. Their son is being transferred to the location of the rental unit for work. Their son has two children. Their son requires a two-bedroom unit. The Landlord had four units that qualified for their son to move into and the Landlord talked to the tenants in these units. The Tenants became abusive towards the Landlord during the discussion which helped the Landlord make the decision that it would be the rental unit that their son would move into.

The Advocate made the following submissions. The Tenants were asked to agree to a rent increase and told they would be evicted if they did not agree. The Landlord gave other tenants the same option, to agree to a rent increase or be evicted for the Landlord's son to move in. There is a letter in evidence to support that the Landlord gave other tenants the same option. The Notice was not issued in good faith. The intention behind the Notice was to increase the rent. Other tenants agreed to the rent increase. The Tenants did not agree to the rent increase and so were issued the Notice. A text message in evidence supports the position that the intent behind the Notice was a rent increase.

In response to questions from the Advocate, the Landlord testified as follows. The Landlord talked to tenants about a possible eviction in relation to one-bedroom rental units as well. The Landlord talked to the Tenants about the fact that they were paying the lowest rent in the building.

Tenant J.H. testified that the Landlord attended the rental unit and told the Tenants that they were being chosen to be evicted to have the Landlord's son move in because their rent was the lowest and that if they agreed to a rent increase, they could stay, otherwise, they would be evicted.

I clarified the following with the Landlord. The Landlord talked to multiple tenants about their son moving into the building and the tenants being issued a Two Month Notice. The Landlord talked to tenants in both one and two bedroom units. The decision to issue the Notice to the Tenants was based on financial reasons, because the Tenants have the lowest rent, and based on how the Tenants reacted to the Landlord during their discussion. The Landlord did speak to the Tenants about increasing their rent. The Landlord explained to the Tenants that they had to decide which unit to issue a Two Month Notice to and explained that they had the lowest rent so logically they would receive the Two Month Notice unless they came to an arrangement to increase their rent.

The Tenants submitted a text message from the Landlord's spouse dated March 12, 2021 stating that they would agree to \$1,300.00 per month as of May 01, 2021 and \$1,400.00 on May 01, 2022.

The Tenants submitted an email from another tenant in the building stating that the Landlord spoke to them about their son moving into the building and needing a unit and stating that the tenant could agree to a rent increase or would have to move out.

The Landlord provided written submissions stating as follows. Their son requires a minimum of a two-bedroom unit to accommodate his fiancé and future mother-in-law. The Landlord explained to the Tenants that it made financial sense to allow their son to move into the unit rather than pay \$1,400.00 to \$1,500.00 per month for their son to live elsewhere. The Landlord offered the Tenants the option of paying \$1,400.00 per month in which case the Landlord would find another place for their son to live because they would be receiving \$1,400.00 from the Tenants.

The Landlord submitted a letter from their son and another individual to the Landlord dated March 01, 2021 stating the following. They have been transferred back to the location of the rental unit. They need a two bedroom apartment by the end of May. They are hoping the Landlord can provide one of their units at the rental unit building as their financial situation is "bad".

## Analysis

The Notice was issued pursuant to section 49(3) of the *Residential Tenancy Act* (the “Act”). The Tenants had 15 days from receipt of the Notice to dispute it pursuant to section 49(8)(a) of the Act. Accepting that the Notice was served March 25, 2021, the Application was filed April 07, 2021, within time.

Section 49(3) of the Act states:

(3) 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.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice.

Policy Guideline 2A deals with ending a tenancy for occupancy by the landlord or close family member and 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.

I find based on the evidence of both parties that there are issues in this matter that call into question the good faith of the Landlord including the following points. That the Landlord's son requires a two-bedroom unit, yet the Landlord spoke to tenants in both one and two-bedroom units about their son moving into the building and the tenants being issued a Two Month Notice. That the Landlord talked to multiple tenants about their tenancies possibly ending pursuant to a Two Month Notice. That the Landlord chose to issue the Notice to the Tenants because they pay the lowest rent and because of their reaction when the Landlord raised the issue of a Two Month Notice with them. That the Landlord spoke to the Tenants about increasing their rent, the Tenants did not agree to a rent increase and the Tenants were then issued the Notice. That the Landlord suggested to the Tenants that they would not be evicted if they agreed to a rent increase.

The onus is on the Landlord to establish that they are acting in good faith.

The only independent evidence provided to support the Landlord's position about their son moving into the rental unit is the letter from their son and another individual dated March 01, 2021. I note that I do not consider the typed letters stating they are from the Landlord and Landlord's spouse to be independent evidence from the Landlord's spouse because the Landlord's spouse has not signed these letters and it is not clear that they represent the submissions of the Landlord's spouse. The Landlord did not call their son as a witness at the hearing to provide affirmed testimony about their intentions. There is no independent documentary evidence before me to support the stated circumstances around the Landlord's son moving into the rental unit. In the absence of further compelling evidence to support the Landlord's position that their son intends to move into the rental unit, I am not satisfied the Landlord has met their onus to prove they are acting in good faith, particularly given the above issues which call into question the good faith of the Landlord.

Given I am not satisfied the Landlord has met their onus to prove they are acting in good faith, I am not satisfied the “good faith” requirement in section 49(3) of the *Act* has been met. Therefore, I am not satisfied the Landlord has proven the grounds for the Notice and the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenants were successful in the Application, they are entitled to recover the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from one future rent payment.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenants can deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

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 04, 2021

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Residential Tenancy Branch