



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, LRE, OLC, FFT, MNDCT, RR, CNL-MT

### Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) submitted on April 09, 2021 is for:

- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- an authorization to recover the filing fee for this application, under section 72.
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49; and
- an extension of the timeline for disputing the Notice, pursuant to section 66.

The tenant's application pursuant to the Act submitted on June 02, 2021 is for:

- cancellation of the Notice, pursuant to section 49, and
- an authorization to recover the filing fee for this application, under section 72.

This hearing was originally convened on August 12 and adjourned to August 30, 2021 due to time constraints. This decision should be read in conjunction with the interim decision dated August 13, 2021.

Both parties attended the hearings and the landlords were assisted by advocate JU on August 12 and 30, 2021. Witness for the landlords KC attended the hearing on August 12, 2021. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000.”

### Preliminary Issue – Service

The tenant affirmed she served the notice of hearing for the application submitted on April 09, 2021 and the evidence (the materials) by registered mail in April 2021. JU confirmed receipt of the packages. The tenant confirmed receipt of the landlords’ response evidence package on July 27, 2021.

Based on the testimonies I find that each party was served with the respective materials for the application submitted on April 09, 2021 in accordance with section 89 of the Act.

The tenant affirmed she served the monetary amendment in person on July 29, 2021 and a second package of evidence on August 03, 2021.

Rules of Procedure 3.14 and 4.6 state:

3.14 Evidence not submitted at the time of Application for Dispute Resolution Except for evidence related to an expedited hearing (see Rule 10), **documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.**

(emphasis added)

#### 4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

**In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.**

(emphasis added)

The Rules of Procedure provide that: "In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded".

I find the tenant's monetary amendment and the second evidence package were served late. Thus, I do not accept the tenant's amendment and the second evidence package.

The tenant affirmed she served the notice of hearing for the application submitted on June 02, 2021 by registered mail in June 2021. JU confirmed receipt of the package.

Based on the testimonies I find that the tenant served the notice of hearing for the application submitted on June 02, 2021 in accordance with section 89 of the Act.

I note the application submitted on April 09, 2021 lists as respondents landlords JC and MC and the application submitted on June 02, 2021 lists as respondent landlord JC. I note that the tenant applied for the cancellation of the same Notice in both applications.

#### Preliminary Issue – Correction of the Landlord's Name

At the outset of the hearing landlord MC corrected the spelling of her last name. Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application submitted on April 09, 2021.

#### Preliminary Issue – Update of Tenancy Address

At the outset of the hearing the landlord corrected the tenancy address. Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application submitted on June 02, 2021.

#### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the two month notice to end tenancy and the order for the landlords to comply with the Act are not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice and for an order for the landlords to comply with the Act. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy and an order for the landlords to comply with the Act which will be decided upon.

### Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An order for the landlords to comply with the Act?
3. An authorization to recover the filing fee for both applications?

If the tenant's applications are dismissed, are the landlords entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the Notice and the tenant's obligation to substantiate the claim for an order for the landlords to comply with the Act.

Both parties agreed the tenancy started on March 26, 2020. Monthly rent is \$1,150.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$575.00 was collected and the landlords hold it in trust. The tenancy agreement was submitted into evidence.

JU affirmed the Notice was attached to the tenant's door on May 26, 2021. The tenant affirmed she received the Notice on May 26, 2021. The tenant's application for the cancellation of the Notice was submitted on June 02, 2021.

A copy of the Notice was provided. The Notice is dated May 26, 2021 and the effective date is July 31, 2021. The reason to end the tenancy is: the landlord's child will occupy the rental unit.

The tenant occupies the basement rental suite and the landlords and their son JU occupy the main floor house.

JU affirmed he has been living with his parents since March 21, 2020. JU's father is 71 years old and JU's mother is 65 years old. JU affirmed he wants to move to the basement suite so he can continue to help his elderly parents, as they do not speak English and they need help because of their health conditions.

The tenant affirmed she has not witnessed JU helping his parents and she does not believe JU wants to help his parents. The tenant affirmed the landlords asked her to print medical documents.

JU affirmed he helps his parents all the time and his printer was broken on the day his parents asked the tenant to print medical documents.

Witness KC affirmed JU helps his parents and that he wants to move to the basement suite so he can be isolated because of the pandemic and be close to his parents to be able to continue to help them. KC affirmed he used to meet with JU every week, but they no longer meet every week because JU is afraid of transmitting Covid 19 to his parents. The landlords submitted a letter signed by KC into evidence:

JU is a responsible person who keeps his promise when he speaks. He loves to meet people and hang out with his friends. However, we could not meet together during the pandemic due to his parents' health and to follow government's policy. For this reason, JU may have been going through hard time during the pandemic season. If he moves to the downstairs, we can meet and hang out again same as before the pandemic.

The tenant is seeking for an order for the landlords to comply with section 28 of the Act and stop harassing her.

The tenant affirmed the landlords sent her a letter on January 31, 2021 asking her to move out. As the tenant did not agree to move out the landlords started harassing her. The tenant affirmed landlord MC threatened her on February 27, 2021: "I will show you what I am capable of", "You're are a trouble seeker, how dare you" and "Do you know

how small the [redacted for privacy] community is?" The tenant affirmed landlord JC stares at her every time she enters the rental unit and one day he yelled at her.

JU affirmed the landlords do not harass the tenant. JU affirmed landlord JC called the tenant "crazy girl" and the tenant is exaggerating her testimony.

### Analysis

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit. Section 49(8) also allows the tenant to challenge the Notice within 15 days. As the Notice was served on May 26, 2021 and the tenant submitted the application on June 02, 2021, the tenant had filed the application in time to dispute the Notice.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid. Furthermore, Policy Guideline 2A states the landlord must demonstrate that the landlord's child plans to occupy the rental unit for at least 6 months and that there is no ulterior motive for issuing the Notice.

Residential Tenancy Branch Policy Guideline 2A states:

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.

In *Gallupe v. Birch*, 1998 CanLII 1339, the British Columbia Supreme Court states:

[35] I conclude from the observations of Taylor J.A. and Melvin J. that a consideration of dishonest motive or purpose is a matter that should be undertaken in a consideration of the good faith of a landlord in serving an eviction notice under s. 38(3). When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.

I find that JU's testimony about helping his parents was credible and convincing. The convincing testimony offered by witness KC and the letter signed by KC confirmed that JU helps his parents and plans to move to the basement rental unit to be close to his parents in order to continue to help them and to be able to isolate because of Covid 19.

Based on the testimony provided by JU and witness KC, I find the landlords have met the onus to prove, on a balance of probabilities, that JU intends, in good faith, to occupy the rental unit.

The tenant claims the landlords are harassing her. I find the alleged harassment is not the motive or purpose to affect the good faith of the landlord's child's intention to occupy the rental unit.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlords are entitled to an order of possession effective two days after service on the tenant.

As the Notice is confirmed, the tenant's application for an order for the landlords to comply with section 28 of the Act is moot.

I warn the tenant that she may be liable for any costs the landlords incur to enforce the order of possession.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

### Conclusion

I dismiss the tenant's applications to cancel the Notice without leave to reapply.

I grant an order of possession to the landlords effective two days after service of this order. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: August 31, 2021

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Residential Tenancy Branch