



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNL, PSF, OLC, LAT, LRE, FFT

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, for an Order requiring the Landlord to provide facilities or services, for an Order suspending or setting limits on the Landlord's right to enter the rental unit, for authorization to change the locks, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on May 19, 2021 were delivered to the Landlord's business address, although he cannot recall the date of delivery. The male Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The male Agent for the Landlord stated that evidence was not submitted by the Landlord.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Should the Two Month Notice to End Tenancy for Landlord's Use?

Is there a need to issue an Order restricting or setting conditions on the Landlord's right to enter the rental unit?

Should the Tenant be granted the right to change lock to the rental unit?

Background and Evidence:

The male Agent for the Landlord and Tenant agree that:

- The tenancy began on April 01, 2021
- The rent of \$5,000.00 is due by the first day of each month;
- Sometime in May of 2020 a Two Month Notice to End Tenancy for Landlord's Use was personally served to the Tenant in attendance at this hearing;
- The Two Month Notice to End Tenancy for Landlord's Use, which is dated May 19, 2021, declared that the Tenants must vacate the unit by July 19, 2021; and
- The Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy was ending because the unit would be occupied by the Landlord or the Landlord's spouse.

The male Agent for the Landlord stated that two tenancy agreements were signed by the parties. He stated that one of the tenancy agreements indicated the basement was included with the tenancy and the second tenancy agreement indicated the basement was not included with the tenancy. He stated that the Tenants were accidentally provided with the tenancy agreement that indicated the basement was included with the tenancy. He stated that the basement of the residential complex was excluded from the tenancy as the Landlord wished to use it.

The Tenant stated that prior to the start of the tenancy there was never a discussion about the basement not being included with the tenancy. He stated that two tenancy agreements were signed, because there was an unrelated error on the first agreement, neither of which excluded the basement from the tenancy.

The Tenant submitted a copy of the most current tenancy agreement. The Agent for the Landlord stated that the "correct" tenancy agreement was not submitted in evidence by the Landlord because it had been misfiled and was just recently located.

The Tenant stated:

- There is an interior door leading between the upper living area and the basement;

- When the tenancy began there was a locking handle on this door, which could only be locked/unlocked from the upper living area;
- The Tenants were provided a key to this door at the start of the tenancy;
- After use of the basement was disputed, the Landlord changed the position of the locking handle so it could only be locked/unlocked from the basement side;
- When the tenancy began the basement could be accessed through a sliding glass door, which was equipped with a lock;
- When the tenancy began the Tenants were provided with a key to the sliding glass door;
- After use of the basement was disputed, the Landlord changed lock on the sliding glass door;
- The Landlord has entered the basement area on at least six occasions since the tenancy began;
- When the Landlord changed the locks, the Tenants did not grant them access to the residential property nor were they given notice of the Landlord's intent to enter the rental unit;
- The Landlord comes to the property on an almost daily basis and peers through their windows;
- The Tenants want an Order limiting or setting conditions on the Landlord's right to enter the rental unit; and
- The Tenants want permission to change the locks that have been recently changed by the Landlord.

The female Agent for the Landlord stated that:

- There is an interior door leading between the upper living area and the basement;
- When the tenancy began there was a locking handle on this door, which could only be locked/unlocked from the upper living area;
- The Tenants were provided a key to this door at the start of the tenancy;
- After use of the basement was disputed, the Landlord changed the position of the locking handle so it could only be locked/unlocked from the basement side;
- When the tenancy began the basement could be accessed through a sliding glass door, which was not equipped with a lock;
- After use of the basement was disputed, the Landlord installed a lock on the sliding glass door;
- Prior to installing the lock on the sliding glass door, the Landlord could not access the basement unless access was provided by the Tenants; and

- The Landlord's wife provided them with access to the unit when the changes to the locks were made.

The male Agent for the Landlord stated that the Landlord has only entered the basement area on one occasion and they have been on the property approximately once per month since the tenancy began.

The male Agent for the Landlord stated that:

- The Landlord is currently living with her sister;
- The Landlord has recently had a disagreement with her sister;
- The Landlord no longer wishes to live with her sister;
- the Landlord intends to move into the residential complex, including the basement; and
- the Landlord did not know she would need to move out of her sister's home when she entered into this tenancy agreement.

The Tenant stated that he thinks this Two Month Notice to End Tenancy for Landlord's Use was served because of the dispute the parties had over the basement.

The Tenant submitted a text message sent to the Tenant, dated May 13<sup>th</sup>, in which an agent for the Landlord declares the Tenants do not have use of the basement; that the female Agent for the Landlord will be living in the basement; and that the basement is going to be renovated.

The male Agent for the Landlord stated that the Landlord did not realize there was a dispute about the basement until after the text message of May 13<sup>th</sup> was sent.

#### Analysis:

I find, on the balance of probabilities, that the Landlord and the Tenants entered into a written tenancy agreement for this entire residential complex, which included the basement. In reaching this conclusion I was influenced, in part, by the tenancy agreement that was submitted in evidence, which does not specify that the basement is excluded from the tenancy.

Although the Agent for the Landlord contends that the parties signed a tenancy agreement that excluded the basement from the tenancy, the Landlord did not submit a copy of that tenancy agreement and the Tenant stated that, prior to the start of the

tenancy, there was never a discussion about the basement not being included with the tenancy. I therefore find the current tenancy agreement, which does not exclude the basement from the tenancy, is the most compelling.

In concluding that the basement is included with the tenancy, I was further influenced by the Assistant's testimony that prior to the Landlord installing a lock on the sliding glass door leading to the basement, which was installed after the tenancy began, the Landlord could not access the basement unless they were granted access by the Tenants.

Regardless of whether the Landlord could not access the basement area because there was no lock on the sliding glass door or because they did not have a key to the lock on the sliding glass door, I find it improbable that the basement would be reserved for the use of the Landlord if the Landlord did not have a means of accessing the basement.

In concluding that the basement is included with the tenancy, I was further influenced by the undisputed testimony that there is an interior door leading between the upper living area and the basement; when the tenancy began there was a locking handle on this door, which could only be locked/unlocked from the upper living area; and the Tenants were provided a key to this door at the start of the tenancy. I find it highly improbable that the Landlord would have provided the Tenants with a key to this interior door if the basement area was not included with the tenancy.

**As I have concluded that the basement is included with the tenancy, I hereby Order the Landlord to comply with section of the 29 of the Act whenever the Landlord wishes to access the residential complex, including the basement, and or the yard of the residential complex.**

Section 29 of the Act reads:

*29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*
  - (i) the purpose for entering, which must be reasonable;*
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;*
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy*

agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

**Regardless of the proceeding Order, I grant the Landlord authority to access the residential property without providing prior notice, for the sole purpose of serving legal notices to the Tenants.**

**As I have concluded that the basement is included with the tenancy, I hereby Order the Landlord to immediately provide the Tenants with key(s) to the lock on the basement sliding glass door and to immediately reverse the door handle on the door between the basement and the upper living area so the door can be unlocked from the upper living area.**

**In the event the Landlord has not provided the Tenants with keys and/or reversed the door handle by October 15, 2021, I authorize Tenants to change those locks/handle; to provide the Landlord with a receipt from a qualified locksmith for those repairs; and, after providing the receipt, to reduce one monthly rent payment by the cost of those repairs.**

Section 49(3) of the *Act* permits a landlord who is an individual to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. On the basis of the undisputed evidence, I find that the Tenant served the Landlord with notice of their intent to end the tenancy pursuant to section 49(3) of the *Act*.

Residential Tenancy Branch Policy Guideline 2A, with which I concur, reads, in part:

*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.* (Emphasis added)

I find that the Landlord has failed to meet the burden of proving the Landlord intends to move into the rental unit. In reaching this conclusion I influenced, in part, by the absence of any oral or written testimony from the Landlord to corroborate the Agent for the Landlord's testimony that the Landlord intends to move into the unit. When a party intends to move into a rental unit it is helpful to have direct evidence from that party regarding intent.

In determining that there is insufficient evidence to establish that the Landlord intends, in good faith, to move into the rental unit I was influenced, in part, by the timing of the service of the One Month Notice to End Tenancy for Cause. While I find it possible that a Landlord would enter into a rental agreement and then serve a Two Month Notice to End Tenancy for Landlord's Use within two months of the start of the tenancy because of a change in personal circumstances, I find it more likely that the Landlord would end the tenancy after such a short period of time because they were unhappy with the tenancy.

I find it reasonable to conclude that the Tenants believed the basement was included with the tenancy and the Landlord believed it was not included with the tenancy. On the basis of the testimony of the male Agent for the Landlord, I found that the Landlord was not aware of the misunderstanding until on, or about, May 13, 2021, which is 6 days before the Two Month Notice to End Tenancy for Landlord's Use was dated. I find the timing of the dispute over the basement and the date on the Two Month Notice to End Tenancy for Landlord's Use supports my conclusion that the Notice to End Tenancy was served because the Landlord was unhappy with the tenancy, rather than for the reason cited on the Notice to End Tenancy.

In determining that there is insufficient evidence to establish that the Landlord intends, in good faith, to move into the rental unit I was influenced, in part, by the text message that was sent to the Tenant on May 13, 2021. In that text message the author, who declares he owns the house, informed the Tenant that the female Agent for the Landlord intends to move into the basement. I note there is nothing in the message that indicates the Landlord intends to move into the upper portion of the residential complex. Given that this text message was written just 6 days prior to the Two Month Notice to End Tenancy for Landlord's Use being dated, I would expect the author to also declare that the Landlord intended to move into the residential complex if the Notice was being served in good faith.

As the Landlord has failed to meet the burden of proving the Two Month Notice to End Tenancy for Landlord's Use was served in good faith, the Two Month Notice to End Tenancy for Landlord's Use is set aside.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Two Month Notice to End Tenancy for Landlord's Use, dated May 19, 2021, is set aside and has no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The Landlord is obligated to comply with the aforementioned Orders, which are highlighted by bold lettering.

The Tenants have established a monetary claim of \$100.00, in compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenants do not wish to enforce the monetary Order through the Province of British Columbia Small Claims Court, the Tenants have the right to reduce one monthly rent payment by \$100.00, pursuant to section 72(2) of the *Act*.



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: September 14, 2021

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Residential Tenancy Branch