



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL DRI MNDCT FFT

### Introduction

The tenant applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 49(8) of the *Residential Tenancy Act* ("Act"). In addition, he applied for additional relief under sections 41 through 43 (dispute a rent increase), section 67 (compensation), and section 72 (recovery of filing fee) of the Act.

Both parties, along with landlord's counsel, an interpreter, and the landlord's daughter and mother, attended the hearing on November 30, 2021 at 9:30 AM.

No service issues were raised, the parties who testified were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

### Preliminary Issue: Severing of Claims

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this case, while the issuing of the Notice might be related to the relief sought for a disputed rent increase and for compensation, it is my finding that only the primary claim for relief – that is, the dispute of the Notice – shall be appropriately dealt with in this application.

Further, it should be noted that, as dispute resolution hearings are limited to one hour (with another hearing commencing at 11:00 AM) and given that the parties would be prejudiced by a lengthy adjournment to a second hearing in order to resolve every claim made in this application, it is my finding that in the interests of case management only the dispute of the Notice shall be addressed in this decision.

The tenant shall remain at liberty to reapply for the claims regarding a disputed rent increase and for compensation. It is noted that the tenant has a separate application for dispute resolution currently scheduled for a hearing on March 22, 2022.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to recover the cost of the application filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on March 1, 2021. Monthly rent is \$920.00, and the tenant paid a \$440.00 security deposit. A copy of the written tenancy agreement was in evidence. As for the rental unit, it is a two-bedroom self-contained lower suite within a house.

The landlord testified that she served the Notice because her 78-year-old mother, who has MS and is disabled, is not able to walk upstairs and the landlord needs the rental unit for her mother. The landlord is very worried about her mother and her vulnerability with possibly catching covid. More recently, the new Omicron variant has only heightened the landlord's concerns. She would like the mother to be home to be safe. (The mother currently resides with the landlord in the upstairs part of the house.)

In addition, the landlord testified that the relationship between her and the tenant has gotten "very bad," that her feelings have been hurt, and that she simply does not have the energy to maintain the landlord-tenant relationship. She is a cancer survivor, and her health remains vital. And, at the end of the day, the landlord simply does not want to rent the property to anyone else going forward. She only wants to keep her mother safe.

The landlord's daughter testified that she had to move out of the family home at the end of August 2021. She is a full-time UBC student who is in frequent contact with large groups of people (for example, in classes, on the Skytrain, and on the bus); this contact has made her weary to be around her elderly grandmother, the landlord's mother. She has had to live on her own but would like to have a place – that is, the rental unit – to self-isolate if necessary. And she would like to live back home for a few months.

Landlord's counsel made submissions both regarding some alleged breaches of the tenancy agreement by the tenant (breaches that are unrelated to the Notice), and regarding the fact that the Notice was properly issued under section 49 of the Act. Further, she submitted that the landlord's mother has "no ability to go upstairs" and that the landlord's daughter has "no place to live" and is forced to rent elsewhere.

Counsel also explained that the landlord-tenant relationship is getting worse, the relationship is not healthy. Indeed, counsel argued that ending this tenancy would be in the tenant's benefit and "good for both parties."

The tenant testified that he has been a tenant for almost ten years and has never had any issues. He argued that this dispute involving the Notice only began after the landlord notified him of a rent increase. His evidence included a text conversation, dated October 4, 2021, between him and the landlord which reads, in part, as follows:

Landlord: just let you know from  
December, the rent will be \$ 980  
monthly. This is because of the  
inflation on utilities, insurance  
and property tax

Tenant: That's way too much increase.  
The maximum allowable rent  
increase is 1.5 %  
And can start January 2022

Landlord: Then I would like to share utility  
expenses  
Or we terminate the rental

The landlord also advises the tenant that unless he starts paying her \$50.00 per month for storage costs (the tenant stores some of his property in the garage), that he needs to remove all of his property by November 1.

These conversations were the catalyst for the landlord issuing the Notice (served in person on October 8, 2021), and the tenant argued that the landlord is using her mother to legitimize evicting him. He further testified that the landlord never previously brought up or otherwise mentioned her mother's health issues.

## Analysis

Section 44(1) of the Act lists fourteen ways in which a party to a tenancy agreement may end a tenancy. Section 44(1)(a)(v) refers to a landlord's notice to end tenancy for use of property, which is covered in more detail in section 49(3) of the Act. This is the specific section under which the Notice was issued, and it reads as follows:

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.

A "close family member" is defined in section 49(1) of the Act to mean, in relation to an individual landlord, (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

The standard of proof in an administrative hearing such as this one is that of a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. However, when a tenant applies to dispute a notice to end a tenancy, the onus shifts to the landlord to prove, on a balance of probabilities, the ground(s) on which the notice to end the tenancy is based.

Prima facie, I find that the landlords have established the ground on which the Notice was issued: namely, that the landlord's mother or daughter, or both, will occupy the rental unit.

However, where a tenant disputes a notice to end a tenancy on the basis that the landlord issued the notice in bad faith then the landlord is obliged to refute that claim and prove that the notice was, in fact, issued in good faith.

"Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy.

And, to reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636).

In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. In this case, the tenant submitted documentary evidence of text conversations from the landlord in which she (A) announced that she would unilaterally start charging the tenant for storing his property in the garage, or else he had to remove that property (even though there is no evidence before me indicating that the landlord ever had an issue in the ten years of tenancy), and (B) threatened to terminate the tenancy should the tenant not agree to either a rent increase or the sharing of utilities.

Where the good faith intent of a landlord is called into question, as it has in this dispute, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

The landlord and her daughter both testified that they intend to occupy the rental unit, as well as the elderly mother, to occupy the rental unit.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has failed to meet the onus of establishing that she truly intends to occupy, or have her daughter or her mother occupy, the rental unit at the end of the tenancy. I find and am persuaded that the evidence supports the tenant's argument that the landlord's actions are nothing more than an attempt to evict the tenant because he refused to agree to unlawful rent increases or additional charges to store his property.

The timing of the Notice being issued – that is, four days after the landlord threatened to terminate the tenancy if the tenant refused to comply with her demands – is, in my mind, not a coincidence. The landlord's mother has apparently had health issues, including multiple sclerosis, for many years. Yet, it was only, within a matter of days of the tenant's push back on the rent increase or additional charges, that the landlord now wishes to have her mother occupy the rental unit. Last, I also find it rather unusual that, despite the mother's difficulty with stairs, the landlord would then intend to place the mother in the lower part of the home.

In short, I am not persuaded that the landlord issued the Notice in good faith. For this reason, the Notice is hereby cancelled effective immediately. The Notice is of no legal force or effect and the tenancy shall continue until ended in accordance with the Act.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the tenant succeeded in his application with respect to the Notice, I grant him \$100.00 in compensation to cover the cost of the filing fee. The tenant is entitled to deduct \$100.00 from his next rent payment in full satisfaction of this award, pursuant to section 72(2)(a) of the Act.

Last, while I make no factual or legal findings in respect of the landlord's comments about the tenant withholding the rent for November 2021, the tenant should be aware that rent must be paid pursuant to section 26 of the Act, unless there is a valid, legal reason under the Act to withhold rent (that is, section 19, section 33(7), section 43(5), or section 65(1)(b) of the Act).

#### Conclusion

**The tenant's application is granted.**

The Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 7, 2021, is cancelled. The tenancy continues until ended in accordance with 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 Act.

Dated: November 30, 2021

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Residential Tenancy Branch