



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HERITAGE HOUSE EXECUTIVES  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, MNDCT, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated July 28, 2021 ("2 Month Notice"), pursuant to section 49;
- a monetary order of \$351.96 for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for his application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 51 minutes.

The landlord stated that he was the owner of the landlord company named in this application and that he had permission to speak on its behalf. He confirmed that the landlord company owns the rental unit. He confirmed his name, spelling, the rental unit address, and provided an email address for me to send this decision to him after the hearing. The tenant confirmed his name, spelling, and provided an email address for me to send this decision to him after the hearing.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules"). The landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant confirmed receipt of the landlord's 2 Month Notice on July 31, 2021. The landlord stated that he thought he served the notice on July 28, 2021, by way of email and posting to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on July 31, 2021.

#### Preliminary Issue – Severing the Tenant's Monetary Application

The following RTB *Rules* are applicable and state (my emphasis added):

##### *2.3 Related issues*

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

##### *6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

At the outset of this hearing, I informed both parties that Rule 2.3 of the RTB *Rules* allows me to sever issues that are not related to the tenant's main urgent application. The tenants applied for three different claims in this application. Two of the tenant's three claims were dealt with at this hearing.

I informed the tenant that he was provided with a priority hearing date, due to the urgent nature of his application to cancel the landlord's 2 Month Notice. I informed him that this was the central and most important, urgent issue to be dealt with at this hearing. After 51 minutes in this hearing, there was insufficient time to deal with the tenant's monetary claim.

I notified the tenant that his monetary claim was dismissed with leave to reapply. I informed him that he received a priority hearing date for the end of tenancy issue, as his monetary claim was a non-urgent lower priority issue, and it could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. The tenant confirmed his understanding of same.

I notified the tenant that he could file a new application and pay a new filing fee, if he wants to pursue his monetary claim in the future. He confirmed his understanding of same.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use of property?

Is the tenant entitled to recover the filing fee paid for his application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2018. A security deposit of \$492.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit.

The tenant stated that the rent is supposed to be \$1,028.00 per month, before the landlord increased the rent by \$29.33 per month, totalling \$1,057.33, which the tenant has been paying since September 2020. The landlord stated that the rent is supposed to be \$1,057.33, which the tenant has been paying.

The tenant seeks to cancel the landlord's 2 Month Notice and to recover the \$100.00 filing fee paid for his application. The landlord disputes the tenant's application and seeks an order of possession against the tenant.

A copy of the landlord's 2 Month Notice was provided for this hearing. Both parties agreed that the effective move-out date on the notice was September 30, 2021, indicating the following reason for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*
- *Please indicate which family member will occupy the unit.*
  - *The child of the landlord or landlord's spouse.*

The landlord testified regarding the following facts. The letter dated November 25, 2021, from the landlord's son, indicates that he wants to move into the rental unit. This is an undisputed, not an alleged, fact. The landlord discussed this with the tenant before the end of July 2021, that his son wanted to move into the rental unit. The landlord attempted to agree with the tenant for him to move out at the end of September 2021 and then again at the end of October 2021. The landlord issued two mutual agreements to end tenancy to the tenant, which the tenant refused to sign. The tenant was delaying the process, did not respond to the landlord, and the landlord thought he was being "gamed." The landlord issued a 2 Month Notice at the end of July 2021 for the tenant to vacate by the end of September 2021. The landlord is not renting the property to someone else. The tenant is a lawyer, so he knows that there are egregious penalties of the landlord violates the 2 Month Notice. The landlord has had "cordial and straightforward relations" with the tenant.

The landlord stated the following facts. The tenant met the landlord's son when he looked at the rental unit in early July 2021, and said that he wanted to move in. The landlord likes the tenant, he has been a good tenant, and he is not trying to kick the tenant out. The landlord's son, in his letter, indicated that the tenant could have one more month to move out by January 7, 2022. The tenant chose not to find another place but has had more than four months to do so, as he "bought himself extra time" by disputing the 2 Month Notice. The landlord cannot wait for the tenant to qualify for a mortgage to buy a place, as this could be for an indeterminate period of time. There are lots of places to rent, the tenant can buy a place whenever he wants, and this is all "smoke and mirrors" by the tenant. The landlord's son should be allowed to move into the rental unit and the landlord seeks an order of possession against the tenant.

The tenant testified regarding the following facts. On September 1, 2018, the tenant signed a tenancy agreement for a two-year period ending on August 31, 2021. The tenant had to move for work, so he sublet the rental unit for a one-year period from September 2018 to August 2019. In August 2019, the tenant told the landlord that he was moving back to the rental unit. At this time, the tenant asked if his girlfriend could move in and the landlord agreed. The landlord did not indicate that there would be any rent increase for the tenant's girlfriend to move in, as per the email, dated July 21, 2019. In September 2019, the tenant moved back into the rental unit with his girlfriend. In September 2020, the landlord issued a rent increase to the tenant, pursuant to an email from May 31, 2020, where the landlord indicated he was not aware of any rent freeze, but he looked into service methods of how to serve the tenant with the notice of rent increase. In June 2020, the tenant refused to sign a fixed term tenancy agreement with the landlord and said that the tenancy reverted to a month-to-month tenancy. In September 2020, the tenant paid a rent increase of \$29.33 per month, which the landlord asked that he pay.

The tenant stated the following facts. On June 13, 2021, the landlord dropped a bill of costs to the tenant when he visited the rental unit with his son. There was no indication at this time that the landlord's son wanted to move into the rental unit. The tenant was told that the landlord needed more rent because it only covered 20% of the cost of the home. The landlord's son did not view the place at that time, in order to move in. On June 28, 2021, the landlord sent an email to the tenant asking that he pay more rent because the tenant's girlfriend was occupying the rental unit. The landlord indicated that he had a reduced rent from the main floor of the property because the business moved out of that unit in March 2021. The landlord indicated that he could not subsidize the tenant's rent any longer. The tenant informed the landlord that his girlfriend was moving out of the rental unit, so the landlord's concerns regarding the

utility usage should be gone. On June 28, 2021, the landlord discussed the matter further with the tenant.

The tenant testified regarding the following facts. The landlord's eviction is not in good faith. The landlord falsified the 2 Month Notice indicating that it was dated for July 28, 2021, when he never served the notice on that date, and it was actually served on July 31, 2021. There is evidence that the primary motive of the landlord, is the tenant's refusal to pay rent increases in June 2021. In June 2021, the landlord demanded a rent increase from the tenant. On July 16, 2021, both parties had a phone call where the landlord said that his son was moving into the rental unit, the tenant was angry, and the landlord said that the tenant had to move at the end of September 2021. On July 21, 2021, the landlord phoned the tenant again and indicated that he had until the end of October 2021 to move out of the rental unit. On July 27, 2021, the landlord sent a mutual agreement to end tenancy for the tenant to leave by the end of September 2021, to the tenant. The tenant disputed this agreement, indicating that the landlord said the tenant could move out at the end of October 2021. The landlord then issued another mutual agreement to end tenancy, for the tenant to leave at the end of October 2021, and when the tenant refused to sign it, the landlord issued a 2 Month Notice to the tenant.

The tenant stated the following facts. The letter from the landlord's son is an unsworn document containing falsified statements and inflammatory language. He thinks that the landlord wrote the document, not the landlord's son. It anticipates the salaries of the tenant and his girlfriend at "six figures" and discusses the current market rate of the rental unit. The landlord renewed the lease of the garden suite at the rental property and showed another unit at the rental property. Although the square footage of the tenant's rental unit is larger, there are other units at the rental property, where the landlord's son can move in. The landlord's son wants, rather than needs, to move into the rental unit. This was all done in bad faith. The landlord illegally raised the tenant's rent in the past. The mutual agreement to end tenancy forms that the landlord provided to the tenant, did not inform the tenant of his rights and his entitlement to one-month free rent compensation. The landlord is trying to avoid his legal obligations. The tenant at no time "welcomed" rent increases or the bill of costs from the landlord. The tenant never agreed to move out of the rental unit.

The landlord stated the following in response to the tenant's submissions. The tenant is a lawyer and is trying to put a "negative spin" on this issue. The landlord was not aggressive in his behavior, nor was he abusive in his relationship with the tenant, regarding rent increases. The tenant offered to pay more rent to the landlord, so it was

a mutual agreement. The landlord did not suggest a figure for rent to the tenant. The tenant said that he would suggest a number and provide it to the landlord. The landlord tried to give 60 to 90 days notice to the tenant to find another place in the local housing market. There is nothing hidden in the mutual agreement to end tenancy. The landlord's son should not have to notarize his statement.

### Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member intends, in good faith, to occupy the rental unit.

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. The tenant received the 2 Month Notice on July 31, 2021 and filed his application to dispute it on August 4, 2021. The tenant's application is within the 15-day time limit under the *Act*. The onus shifts to the landlord to justify the basis of the 2 Month Notice.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* 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 that the landlord had a number of ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons explained below.

The tenant provided a number of emails between the parties from July 2019, June 2020, and June and July 2021. The landlord did not dispute the authenticity or contents of these emails.

It is undisputed that there was a previous rent increase in September 2020 and an attempted further rent increase in June 2021, by the landlord. Both parties provided affirmed testimony and the tenant provided proof of monthly rent payments, indicating that the tenant paid a monthly rent increase to the landlord from September 2020. The tenant provided affirmed testimony and emails from June and July 2021, showing an attempted rent increase by the landlord in June 2021. The landlord did not dispute this information, nor did he dispute that he provided a bill of costs to the tenant on June 13, 2021, and a long, detailed email on June 28, 2021, confirming that he required a “significant increase” in rent from the tenant, outlining these costs, and the market rent conditions in the area.

I find that there may be other potential units for the landlord’s son to move into at the rental property. The landlord did not indicate why his son could not move into another rental unit at the same property. The tenant questioned why the landlord’s son had to move into his specific rental unit, when another garden suite lease was renewed and there were other units available at the same rental property. The landlord was given a chance to respond to all of the tenant’s statements during this hearing, but did not do so, regarding this issue.



As noted above, both parties were given an opportunity to call witnesses at this hearing. The landlord's son did not attend this hearing to verify that he wrote the November 25, 2021 letter provided as evidence for this hearing. He did not attend to testify that he intended to move into the rental unit in good faith, when he wanted to move in, or why he wanted to move into the tenant's specific rental unit, rather than another unit at the same rental property. The tenant questioned the authenticity of the letter and the veracity of the information contained in the letter. As noted above, it is the landlord's burden of proof to show that his son intends to move into the rental unit in good faith.

I find that the tenant's employment and income level, which is irrelevant, being discussed in the letter from the landlord's son, may question his good faith intention to move into the rental unit. I find that the landlord provided insufficient evidence that the tenant agreed to move out of the rental unit by October 31, 2021, as indicated in the landlord's son's letter, which the tenant disputed. I find that the letter from the landlord's son indicating that he expressed an interest to the landlord in July 2021, to move into the rental unit, to question the good faith intention, since it occurred after the rent increase discussions between both parties in June 2021.

The landlord issued two mutual agreements to end tenancy to the tenant at the end of July 2021, effective at the end of September and October 2021, which the tenant refused to sign. On July 31, 2021, the tenant received a 2 Month Notice for the landlord's son to move into the rental unit.

The above most recent events occurred within a period of approximately 1.5 months from about mid-June to the end of July 2021.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his burden of proof to show that his son intends to move into the rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice, dated July 28, 2021, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession for landlord's use of property.

As the tenant was mainly successful in his application, I find that he is entitled to recover the \$100.00 filing fee paid for his application.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated July 28, 2021, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession for landlord's use of property.

I order the tenant to deduct \$100.00 on a one-time basis only, from a future rent payment to the landlord at the rental unit, in full satisfaction of the monetary award for the filing fee.

The tenant's monetary application for \$351.96 is dismissed with leave to reapply.

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: December 07, 2021

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Residential Tenancy Branch