



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL, FFT**

### Introduction

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, PP, and the Tenants, PL and SL, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the Two Month Notice on October 27, 2021. The Tenants confirmed receipt of the Two Month Notice. I find that the Two Month Notice was served on the Tenants on October 27, 2021 pursuant to Section 88(a) of the Act.

The Tenants confirmed that they personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on November 9, 2021 (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package. I find that

the Landlord was served with the documents for this hearing on November 9, 2021, in accordance with Section 89(1)(a) of the Act.

### Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord's Two Month Notice?
2. If the Tenants are not successful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recovery of the application filing fee pursuant to Section 72 of the Act?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenants confirmed this oral periodic tenancy began on July 23, 2016 but with a different owner. In July 2021, the house was sold, and the present Landlord took over. The Tenants testified that the monthly rent is \$872.00 payable on the first day of each month. No security deposit or pet damage deposit was collected by the first landlord.

The Landlord stated the monthly rent is \$875.00 payable on the first day of each month. He said he asked for half a month's rent for a security deposit, but the Tenants have not paid this yet.

The reason stated for the Landlord's Two Month Notice was that a close family member, the landlord or the landlord's spouse, will occupy the unit. At the hearing, the Landlord testified that he has no spouse, that he is single. He stated he needs more space, that his mother and father would be occupying the rental unit. He said his parents live in the same city as the rental unit and they are going to sell their home to move into the Landlord's residential property. The Landlord said that his father is scheduled for leg surgery, but his mother will definitely be moving into the rental unit. The Landlord testifies that he has plans to fix up the inside of the rental unit and complete drainage work outside. Half the drainage work has already been completed. He states he also needs to make the rental unit wheelchair accessible.

The Tenants do not believe that the Landlord has the honest intention that his mother and father are moving into the rental unit. The Tenants testified that in October 2021, the Landlord told them that his nephew or his sister would be moving into the rental unit. Earlier, the Tenants said they spoke to the Landlord's father, and they were told by him that it was the Landlord's mother that needed the leg surgery. The Tenants were told that the parents' existing home has a chair elevator, and that some rod was bent and needed repairs to assist the mother to get into her home. The Tenants assert that the reason for the eviction changes every month. They said the Landlord asked for a security deposit, then the following week they received the Two Month Notice. The Tenants confirmed the security deposit was not paid because of receiving the Two Month Notice.

The Tenants have continued to pay their rent, but in December 2021, the Landlord would not accept their rental payment. They said the Landlord told them that December will be their free month in the rental unit. They said the Landlord would not take their rental payment in January 2022. The Tenants have kept the back rental payments that the Landlord would not accept in their safe.

The Landlord did not elaborate in his final submissions on the issue of good faith. He only repeated that he needs the space, and that his parents are moving in.

### Analysis

The standard of proof in a dispute resolution hearing is on 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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this application. It states:

#### ***Landlord's notice: landlord's use of property***

- 49 (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*
- (a) *for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be*

- (i) *not earlier than 2 months after the date the tenant receives the notice,*
  - ...
- (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.*
- ...
- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] ...*
- (8) *A tenant may dispute*
  - (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*
- ...

The Tenants claimed they did not believe that the Landlord was acting in good faith. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties understand issues that are likely to be relevant in this regard.

## **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.*

*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. 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.*

The Tenants believe that the Landlord does not have the honest intention to have his parents move into the rental unit. Since raising this concern, the onus is on the Landlord to prove he is acting in good faith. The Landlord's reasons in the Two Month Notice specifies that the Landlord or Landlord's spouse will be occupying the rental unit. The option for '*The father or mother of the landlord or landlord's spouse*' will be occupying the unit is not chosen. The form clearly allows one of three choices, but the Landlord's written choice and testimony are at odds. The Tenants submitted that first the Landlord told them his nephew, or his sister would be moving into the rental unit. The Tenants shared a story from the Landlord's father, that the Landlord's mother would be having leg surgery. In testimony the Landlord stated it was his father who would be having the leg surgery, which was contradicted by his father. This lends credence to the Tenants' concerns that the Landlord is not acting in good faith.

The Landlord did not provide any evidence that he has completed half the work on the drainage around his house, he did not provide evidence or plans on the work for a wheelchair ramp, and he did not provide evidence of his parent's need to move into his home. Consequently, I find that on a balance of probabilities there is enough ambiguity and vagueness that leads to question if the Landlord honestly intends to move his parents into the basement rental unit in his house. Accordingly, I cancel the Landlord's Two Month Notice. The tenancy shall continue until ended in accordance with the Act.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

### Conclusion

The Tenants' application to cancel the Two Month Notice is granted.

The Tenants may withhold \$100.00 from next month's rent to recover their application filing fee for this dispute resolution file.

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: January 28, 2022

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Residential Tenancy Branch