



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNL, DRI, OLC, FFT

### **Introduction**

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

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the Notice of Dispute Resolution Package. The landlord's son came to the rental unit and picked up the package on about December 8, 2021. The landlord did not serve the tenant with their evidence package. The evidence uploaded to the Residential Tenancy Branch by the landlord was reviewed with the tenant and he agreed to proceed with the hearing.

I note s. 55 of the *Act* requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

At the outset, I advised the parties of rule 6.11 of the Rules of Procedure (the "**Rules**") which prohibits participants from recording the hearing. The parties confirmed they were not recording the hearing. I also advised the parties that pursuant to Rule 7.4, I will only consider written or documentary evidence that was directed to me in this hearing.

### **Issues to be Decided**

Are the tenants entitled to:

- 1) an order cancelling the Two-Month Notice;
- 2) an order that the landlords comply with the Act;
- 3) the cancellation of the additional rent increase;
- 4) recover the filing fee?

If the tenants fail in this application are the landlords entitled to:

- 1) an order of possession?

### **Background and Evidence**

The tenancy agreement was signed on January 12, 2021, for a fixed term ending on January 31, 2021, and then continuing on a month-to-month basis thereafter. Rent was set at \$2250.00 payable on the 1<sup>st</sup> day of the month. A security deposit in the amount of \$1125.00 was required and is retained by the landlord, in trust.

The landlord sent a notice of rent increase (RTB #7) to the tenant signed November 5, 2021, advising of a rent increase of \$500.00 effective March 1, 2022. The tenant contacted the landlord and pointed out that this increase was well in excess of the allowable Provincial Rent increase for 2022 of 1.5% and refused to pay the increase, asking the landlord if they were willing to negotiate a rent increase that would work for both parties. The landlord refused. Subsequently, the landlord issued a Two- Month Notice on November 18, 2021. The reason provided was that their son would be moving into the rental unit. The “move out” date was January 31, 2022.

Just a few months prior to the notice of the rent increase, the landlord requested that the tenants allow them to change out the furniture in the rental unit because their son purchased a condominium and needed furniture. The tenant said this proves that the Two Month Notice was not issued in good faith and was issued because the tenants refused the \$500.00 rent increase.

The landlord provided honest testimony. The primary reason for the Two-Month Notice was to get around the Provincially Regulated Rent Increase. The landlord testified that in January 2021 the rental market was soft because of COVID. The landlord lowered the monthly rent to \$2250.00 per month to secure a tenant. This year the market has increased and “fair market value” for a similar furnished condo rents between \$2800-\$2900 per month.

The landlord states that they are losing between \$600-700 per month. She stated that she pays more than \$2200.00 per month in mortgage payments, \$450.00 in strata fees plus insurance and taxes. The landlord provided no supporting evidence regarding these costs. The landlord submitted into evidence rental property prices in the lower mainland.

The landlord pointed out that the tenants initialed page 2 of the tenancy agreement. Under “additional information” the landlord included the clause, “the rent price will be changed depends on the market price after one year”. She stated that several of her landlord friends have increased their rent by similar amounts.

The landlord further testified that her son works in this municipality and this rental unit is more convenient to his work location via transit then the condo he purchased in a different municipality. Her son’s occupancy date is “flexible”. Their son may want to move into the rental unit in November 2022.

### **Analysis**

The landlord and tenant were open to negotiating a settlement regarding a rent increase and

length of continued tenancy but unfortunately the terms they agreed to fell outside the 1.5% rent increase permitted under the *Act*. Similarly setting an arbitrary end to a month-to-month tenancy again is not permitted under the *Act*.

I reviewed the law and policy, explained to the landlord that the permitted increase was 1.5% which would result in a rent increase of \$38.52 and the landlord said this was unacceptable. The settlement terms were inconsistent with the *Act* or regulations and unenforceable. I am, therefore, unable to write up a settlement agreement and will make my decision based on the merits of the case.

I have considered the oral testimony and the documentary evidence on file. My findings are based on a balance of probabilities.

The Notice was sent by email on November 18, 2021 and is therefore deemed served three (3) days after it was sent, November 21, 2021. The tenant disputed the Notice pursuant to s. 49(8) of the *Act* on November 29, 2021, within the fifteen (15) days' time limit under the *Act*.

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

Residential Tenancy Policy Guideline PG-2A [Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member] provides guidance to landlords and tenants to understand the relevant issues around s. 49.

## **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.

Rule 6.6 states, "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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, **the landlord must prove the reason they wish to end the tenancy** when the tenant applies to cancel a Notice to End Tenancy."

The landlords and the tenants should be aware that if the landlord fails to use the rental unit as stated in the Two-Month Notice, for occupancy by their son, then pursuant to s. 51 of the Act, the landlord may be subject to paying the tenants the equivalent of 12 months' rent as a penalty.

The landlord pointed out that in the signed Tenancy Agreement under Part 3, "Rent" under "Additional Information" as follows: "The rent price will be changed depends on the market price after one year". She states the tenants initialed and signed the agreement thereby agreeing to the terms.

Section 5 of the *Act* provides that the *Act* cannot be avoided.

- 5** (1) Landlords and tenants may not avoid or contract out of this *Act* or the regulations.  
(2) Any attempt to avoid or contract out of this *Act* or the regulations is of no effect.

The landlord correctly stated that the parties signed the contract and initialed each page including the notation that "rent price will be changed depends on the market price after one year", however, as s. 5(d) above provides "Any attempt to avoid or contract out of this *Act* or regulation **is of no effect**". Clauses inserted into the agreement that are not in keeping with the law, regulations, and/or policy are unenforceable – of no force or effect.

I have included the link to Standard Rent Increases for the parties.

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases/standard-rent-increase>

The landlord provided candid testimony admitting the reason for the Two-Month Notice was to circumvent rent controls and less about her son possibly moving into the rental unit at some unspecified future date. She supported her case with current rents charged in this and surrounding municipalities. She stated that her expenses exceed the rental income, and a \$38.52 rent increase is unacceptable. She cannot continue at a loss. In view of the evidence and testimony provided, I find the notice was not issued in "good faith".

As such, I grant the tenant's application

- to cancel the Two-Month Notice to End Tenancy;
- ordering the landlord to comply with the *Act*;
- to cancel the \$500.00 rent increase;
- to recover the filing fee.

Notwithstanding the above, the under s. 43 "Amount of rent increase" provides as follows:

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
  - (b) ordered by the director on an application under subsection (3), or
  - (c) agreed to by the tenant in writing.

The landlord and tenant in the settlement negotiations agreed to a rent increase in excess of the provincially mandated 1.5%. The parties are free to formalize a rent increase they negotiate between themselves, independent of this process, as per s. 43(c).

I am not unsympathetic to the landlord's situation. The Residential Tenancy Regulations allow landlords to apply for additional rent increases when:

- The landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property;
- The landlord has incurred a financial loss for the financing costs of purchasing the residential property, if the financing costs couldn't have been foreseen under reasonable circumstances;
- The landlord, as a tenant, has received an additional rent increase for the same rental unit.

Landlords must apply to the RTB for an order using an [Application for Additional Rental Increase Form - RTB-52](#) (PDF, 1.9MB). This form cannot be filed online and must be submitted to the RTB directly, or through Service BC.

The landlord has leave to apply for an additional rent increase as per the RTB.

Pursuant to section 72(1) of the *Act*, as the tenants have been successful in the application, they may recover their filing fee from the landlord by deducting \$100.00 from their next rent payment.

### **Conclusion**

The tenant's application seeking to cancel the Two-Month Notice is granted pursuant to s. 49 of the *Act*. The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the *Act*.

The tenant's application seeking to cancel the additional \$500.00 rent increase is granted pursuant to s. 43 of the *Act*.

I order the landlord to comply with the terms of the *Act* pursuant to s. 62 of the *Act*.

As the tenant's application was successful, the \$100.00 filing fee shall be recovered. In accordance with the offsetting provisions of section 72 of the *Act*, the tenant may reduce a single rent payment due to the landlord by \$100.00.

This order is final and binding and may be enforced.

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: February 8, 2022

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Residential Tenancy Branch