



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49.

NU attended as lawyer for the landlord who did not personally attend ("the landlord"). YH and JS attended as advocates and agents for the tenants who did not personally attend ("the tenant").

Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The hearing process was explained, and the landlord was given an opportunity to answer questions.

The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. The landlord raised no issues of service.

The tenant acknowledged receipt of the landlord's Two Month Notice on January 31, 2022, and evidence package. The tenant raised no issues of service.

### *Preliminary Issue – Settlement*

I explained to the parties that under section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spent considerable time discussing possible settlement. They did not reach settlement.

Accordingly, the hearing continued.

*Preliminary Issue – Order of Possession*

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord.

Section 55 states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Two Month Notice?

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The hearing, scheduled for 1-hour, lasted 57 minutes. Each party submitted considerable documentary evidence including Affidavits, photographs, and written submission. Considerable conflicting testimony was submitted. I do not refer to all the evidence in my Decision. While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. Only admissible, relevant evidence is referenced that is material to the issues, my findings and my Decision.

### *Background of Tenancy*

The parties agreed the tenancy began November 1, 2009, and monthly rent is \$500.00. No security deposit was paid. There was no written agreement. The unit is a mobile home located on the landlord's property which also contains several other buildings.

The parties agreed Two Month Notice was served on January 31, 2022. The Notice indicated an effective move-out date of March 31, 2022. The reason for the issuance of the Notice is stated to be that the mother or father of the landlord or the landlord's spouse intended to occupy the unit. The tenant acknowledged receipt. The tenant filed an application to dispute the Notice within the 15-day period.

The landlord testified as follows. They are spouses. The parents of one of the landlord's lives on the property including the father, PH. The mother and PH want to live separately. The landlord stated that their intention is that the father PH move into the unit which is the most suitable given various factors described in the material..

The landlord submitted several Affidavits supporting the plans that PH will move into the unit.

The Affidavit of PH states that he is 77 years old. He wants to move into the unit. PH set out several reasons, stating in part:

16.The Rental Home would provide the following benefits, which make it the ideal choice for accommodation for me on the Premises:

- a. It is easily accessible by car;
- b. It is one level, so I am able to easily move around the Rental Home despite my recent knee surgery and significant nerve pain, attributable to a medical condition that I struggle with daily;
- c. The Rental Home has all necessary amenities such as:
  - 1. Wifi;
  - 11. A landline;
  - 111. Adequate cellphone reception; 1v. A cable tv connection;
  - v. A habitable state of decoration and repair;
- d. It is of a reasonable size, I estimate approximately 1100 square feet;
- e. It is attached to a garage that I would like to make use of to store valuable possessions and park a vehicle. I believe that a family member being in close proximity to the garage would heighten the security of the items contained therein;
- f. It will afford me the privacy and space that I believe I need in order to begin to address domestic tensions that have arisen in my personal life, which is not possible to get while living in the Main House;
- g. It is close to my daughter's residence, who provides me with daily care and assistance that I require due to my health and age.

The tenant submitted comprehensive materials, including an Affidavit and written submissions. They submitted documents with photographs that summarized the location of the various buildings and the timeline of events.

The tenant claimed the landlord's parents were not moving into the unit. They asserted that the landlord raised the issue of increasing the rent with the tenant, although no amount was suggested. A motive was increasing rent.

Also, the tenant claimed that the landlord had a well equipped, comfortable alternate accommodation where the father PH could stay. They contended there was no reason why the father had to move into the unit.

The tenant stated in their written submissions:

We believe there is an intent to deceive the tenants and we believe there is an ulterior purpose for ending the tenancy and they are trying to avoid obligations under the RTA. We believe the landlord would like to re-rent the unit for higher rent.

At the end of November 2021, the parents of the landlord verbally indicated that they would like to increase the rent due to increasing costs. When the tenant asked for the amount of the rental increase, no amount was given and no further information was provided.

Prior to serving written notice, the landlord, as well as the parents of the landlord, verbally indicated that they required the unit (3140 Frost Road) for other purposes.

When the written notice was served on January 31/2022, it states that the parents of the landlord would be moving into the rental unit. However, the parents of the landlord have already lived on an adjoining property [address] for the last 20 years. The landlord lives in a guest house on the same property ([address] for over 5 years. There is also a third house on an adjoining property [ address, the family cabin"] that is currently vacant and unoccupied.

If the parents of the landlord were looking to move into another property, the unoccupied house [address] or the guest house at [address] would be reasonable options.

Due to the timing of the rental increase conversation, as well as other options/properties that the parents of the landlord could occupy, this suggests that the landlord is not acting in good faith.

The tenant said they are unable to find another place to live that is affordable.

## Analysis

Section 49 of the Act allows a landlord to end a tenancy on a date that is not earlier than 2 months after the date the tenant receives the notice or if the tenancy is for a fixed term not earlier than the date specified as the end of the tenancy in the agreement, if they, in good faith, plan to move into the rental unit.

The tenant questioned the good faith of the Notice saying that the landlord had a place where the father could live which was habitable, comfortable and modern. They objected to moving because they doubted the landlord intended to use the unit and believed the landlord was acting to obtain more rent. They asserted the landlord was acting in bad faith.

*Residential Tenancy Branch Policy Guideline number #2* examines the issue of ending a tenancy for landlord's use of property.

The Guideline notes that *good faith* is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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 the Tenancy.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenant has disputed the good faith intention of the landlord, which I find has no basis given the testimony and evidence of the landlord which I find credible and reliable. I found no evidence supporting the tenant's claim of bad faith other than the observation that the landlord does not need to live in the unit and conjecture that the true motivation was increased rent.

The landlord submitted complete, well prepared and concise materials supporting the landlord's claim that the father of the landlord intended to occupy the unit. I find the evidence credible and convincing. I accept the landlord's evidence in all aspects. I find the landlord's evidence shows honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. I accept that the landlord wants the father to live in the unit.

As noted above in Policy Guideline #2, "If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy." I find that the landlord has met the burden of proof on a balance of probabilities that their intention is to live in the unit.

Although the Notice has an effective date of March 31, 2021, there is no issue about the tenant paying rent. I therefore find that the Order of Possession is effective May 31, 2022, after service on the tenant. This effectively provided four months' notice to the tenant.

Therefore, I dismiss the tenant's application to cancel the Two Month Notice.

Section 55(1) provides that the director must grant the landlord an Order of Possession if the landlord's Notice complies with section 52 (form and content) and the tenant's application is dismissed.

I find the Notice complied with section 52.

As I have dismissed the tenant's application, I grant the landlord an Order of Possession effective May 31, 2022, at which time the tenant and occupants must provide vacant possession to the landlord. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Court of British Columbia.

Conclusion

I dismiss the tenant's application without leave to reapply. I grant the landlord an Order of Possession effective May 31, 2022, at which time the tenant and occupants must provide vacant possession to the landlord.

Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Court of British Columbia.

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: May 20, 2022

---

Residential Tenancy Branch