



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## **DECISION**

Dispute Codes: CNL FFT

### **Introduction**

The tenant disputes a Two Month Notice to End Tenancy For Landlord's Use of Property (the "Notice") under section 49(8) of the *Residential Tenancy Act* ("Act"<sup>1</sup>).

A dispute resolution hearing was convened on June 9, 2022. In attendance were the tenant and the landlord's agent. The parties were affirmed, no service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

### **Issues**

1. Is the tenant entitled to an order cancelling the Notice?
2. If he is not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the 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 in 2010. Rent is \$1,065.75. There is no security or pet damage deposit for this tenancy, nor is there a copy of any written tenancy agreement.

On February 28, 2022 the landlord served the Notice. The Notice indicated that the landlord was ending the tenancy because the father or the mother of the landlord or the landlord's spouse will occupy the rental unit. The effective end date of the tenancy was April 30, 2022. The tenant submitted a copy of the Notice into evidence.

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<sup>1</sup> All section references are to the *Residential Tenancy Act*, SBC 2002, c. 78.

The landlord's agent testified that it is the landlord's intention to have his mother occupy the rental unit. She has returned from India and is currently shuttling back and forth between the landlord and his brother's residence. A copy of an airline ticket for the mother is in evidence.

The rental unit is a two-bedroom rental unit in the lower, or basement portion of the house; there are two other rental units (both one-bedrooms) in the basement. The landlord and his family, including his two boys, live in the upstairs three-bedroom part of the house. Further, the agent testified that the two-bedroom rental unit is ideal because the mother would like to have her grandkids over for visits, and the mother also has a caretaker who would be attending.

The tenant argued that the landlord's mother could be placed in one of the one-bedroom rental units. He argued, moreover, that the landlord simply wants to re-rent the rental unit out for a higher rent. And he argued that except for the airline ticket, the landlord has not provided any other evidence to establish that the mother intends to occupy the rental unit.

The tenant explained that he has rented since 2010, that his son (who lives with him) attends school nearby, and the tenant works nearby. It would be hard for him to find something else.

A previous decision of the Residential Tenancy Branch was submitted by the tenant. In that decision, the previous landlord (who sold the house to the present landlord) served a two month notice on the tenant. The tenant succeeded in having that notice cancelled.

### Analysis

The Notice was given under section 49(3) wherein the "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."

The tenant disputes that the Notice was issued in good faith.

"Good faith" means that a party is acting honestly when doing what they say they are going to do, or required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the Act. 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. When the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus shifts to the landlord to prove 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 has not submitted any evidence to support his argument that the landlord intends to re-rent the rental unit out at a higher price, instead of having his mother occupy the rental unit. Indeed, the documentary evidence consisting of the airline ticket substantiates the landlord's agent's testimony and submissions that the landlord's mother intends to occupy the rental unit. Moreover, that the mother intends to have her grandkids visit, along with the occasional caretaker visit, is consistent with the desire to have her occupy the two-bedroom rental unit. Last, there is no evidence before me, or any reason, for me to make any adverse finding on the agent's credibility.

As an aside, the previous decision referenced does not, I find, lend any weight to the tenant's argument that the landlord has an ulterior motive in issuing the Notice.

Taking into careful 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 proven the ground on which the Notice was issued. Accordingly, the Notice is upheld, and the landlord is, pursuant to section 55(1), granted an order of possession. It is further noted that, having reviewed the Notice, I find that the Notice complies with section 52 in form and content.

The order of possession is issued to the landlord, in conjunction with this Decision. It is the landlord's responsibility to serve a copy of this order on the tenant. The order of possession will have an effective date of June 30, 2022, which is the date on which this tenancy shall end. (However, the landlord is at liberty to extend the tenant's occupancy if he chooses.)

Pursuant to section 51(1) the tenant is entitled to rent-free occupancy of the rental unit for the month of June 2022.

Last, the landlord is cautioned that any use of the rental unit, other than having his mother live there, may give rise to a claim for compensation (potentially in the amount of \$12,789.00) by the tenant. The landlord should read [section 51\(2\)](#).

The tenant is not entitled to recover the cost of the application filing fee.

Conclusion

**IT IS HEREBY ORDERED THAT:**

1. The application is dismissed.
2. The Notice is upheld.
3. The landlord is granted an order of possession.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1). A party's right to appeal this decision is limited to grounds provided under section 79 or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: June 9, 2022

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Residential Tenancy Branch