



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL FFT

### Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 15, 2022 (2 Month Notice) and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing. All parties were affirmed and the hearing process was explained. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. A summary of the evidence is provided below and includes only that which is relevant to my findings.

As neither party raised any concerns regarding the service of documentary evidence, I find the parties were sufficiently served in accordance with the Act.

### Preliminary and Procedural Matter

The parties confirmed their email addresses and that they decision would be sent by email to both parties.

### Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, should the tenant recover the cost of the filing fee?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A 2-year fixed-term tenancy began on July 1, 2015 and converted to a month-to-month tenancy after June 30, 2017. Current monthly rent is \$3,590.48 per month and is due on the first day of each month.

The tenant indicates they were served on February 17, 2022, via registered mail with the 2 Month Notice. The tenant filed their application to dispute the 2 Month Notice on March 2, 2022, which is within the 15-day timeline provided under the Act. The effective vacancy date listed on the 2 Month Notice is April 30, 2022.

The reason listed on the 2 Month Notice states:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	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 close family member will occupy the unit.
<input checked="" type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse
<input type="checkbox"/>	The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
<input type="checkbox"/>	All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit.

The tenant raised the issue of good faith during the hearing. The landlord claims they issued the 2 Month Notice as they intend to occupy the rental unit in Surrey so they can live by the sea and so that their daughter can attend a local school in the area.

The landlord was asked how many square feet (SF) their current home is to which the landlord first stated 2,000SF, and then later changed their testimony to 3,000SF. The tenant replied by stating that the landlord's current home is 3,580SF so neither answer is truthful. The landlord replied by saying they only occupy 2,000SF of the home so that is why they described the home as 2,000SF. The parties were advised that I did not ask how many SF the landlord occupies, I asked how many SF the landlord's current home was, which I will address later in this Decision.

The landlord testified that they own a total of 5 properties and that 4 of the 5 properties are rental properties. The landlord was asked which of the rental properties had the

least amount of rent currently, to which the landlord stated the rental unit, which is subject of this hearing.

The landlord testified that their current residence is not for sale and is not rented out and is in West Vancouver. The tenant asked the landlord why their service address was for a different address in Surrey and not their home in West Vancouver. The landlord stated that they are regularly at the other home in Surrey so pick up their mail at that rental property, which I will address later in this Decision. The landlord was asked if they ever occupied the other home in Surrey and they said yes but could not recall a specific date. Later in the hearing, the landlord said they moved from their other Surrey home to West Vancouver in July 2021 after saying earlier in the hearing they could “not remember” when they moved.

The landlord claims the 2 Month Notice has been issued in good faith. The landlord was asked how large their current home in West Vancouver was compared to the rental property in Surrey that they claim they want to move to. The landlord testified the West Vancouver home is 3 bedrooms and 2.5 bathrooms whereas the Surrey property is 3 bedrooms and 3 bathrooms. The tenant stated that the landlord was not being truthful as they looked up both properties and that their current home in West Vancouver was actually 3 bedrooms and 3 bathrooms versus the Surrey home which is only 2 bedrooms and 2.5 bathrooms.

While the tenant raised the issue of the landlord and their spouse changing their legal names in 2014, I find this is not relevant so will not address this matter further in this decision.

The landlord claims that their current BC driver's license indicates their address as their home in West Vancouver. The tenant stated that the landlord is not credible, has plenty of other homes they can reside in and is attempting to end the tenancy in bad faith for the purpose of increasing the monthly rent.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Firstly, I find the tenant more credible than the landlord in this matter as the tenant's testimony was consistent throughout the hearing, while the landlord changed their testimony several times from claiming that they did not remember when they moved

from Surrey to West Vancouver and then later claiming it was July 2021. Another example was that the landlord was asked how many SF their current home was, and the landlord stated 2,000SF and then later stated 3,000SF, when the tenant states they looked up the home details and it is actually 3,580SF, which the landlord did not deny during the hearing. I afford no weight to the landlord's statement that they only provided the SF of the area they use in their current home as the landlord was not asked that question during the hearing and that such a response is not logical.

Given the above, I prefer the testimony of the tenant that the rental unit the landlord's claims to occupy is even smaller than their current home and that there is no documentary evidence such as an email to the school in Surrey asking about whether their daughter could attend the local school in Surrey and whether that was even a possibility, which I find would be reasonable evidence to expect at this hearing.

RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member (PG 2A) states in part, which applies:

#### **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.

[reproduced as written]

In addition, I find that the rental unit has the lowest rent of all 4 of the landlord's rental properties, which was confirmed by the landlord, and that this fact to be compelling evidence. Therefore, I afford this evidence significant weight and I find that it is more likely than not that the 2 Month Notice was not issued in good faith by the landlord. Consequently, **I cancel** the 2 Month Notice due to lack of good faith. The 2 Month Notice is of no force or effect as a result.

**I ORDER** the tenancy to continue until ended in accordance with the Act.

As the tenant's application had merit, I find that the tenant is entitled to monetary compensation pursuant to section 72 of the Act, in the amount of **\$100.00** to recover the cost of \$100.00 filing fee.

I authorize the tenant to a **one-time rent reduction in the amount of \$100.00** from a future month of rent, in full satisfaction of the tenant's recovery of the cost of the filing fee. This order is made pursuant to section 62(3) of the Act.

### Conclusion

The 2 Month Notice dated February 15, 2022 is cancelled and is of no force of effect due to a lack of good faith.

The tenancy is ordered to continue until ended in accordance with the Act.

The tenant may deduct \$100.00 from a future month of rent in full satisfaction of the filing fee as noted above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 16, 2022