



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **CNL FFT**

### Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2022 ("2 Month Notice") pursuant to section 49; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72 of the Act.

The Landlord and the Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. A witness, RW, attended the hearing when required to provide testimony on behalf of the Landlord.

The Tenant stated he served the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord by registered mail. The Tenant submitted a Canada Post receipt and tracking number for service of the NDRP on the Landlord. The Landlord acknowledged he received the NDRP. I find the Tenant served the NDRP on the Landlord in accordance with the provisions of section 89 of the Act.

The Tenant stated he served his evidence on the Landlord by ExpressPost. The Tenant provided the Canada Post tracking number. The Canada Post website discloses that the package sent under this tracking number was returned to the sender. As such, I find it was not received by the Landlord. Based on the foregoing, other than for the copy of the 10 Day Notice submitted to the RTB, the Tenant's evidence is not admissible for this

proceeding. I told the Tenant he had the option of providing, or calling witnesses to provide, testimony on the contents of the Tenant's evidence.

The Tenant stated the Landlord did not serve any evidence on him for this proceeding.

#### Preliminary Matter – Removal of Applicant from Application

At the outset of the hearing, I noted the tenancy agreement stated the tenant was the Tenant whereas the Application stated the applicants were the Tenant and another person ("CC"). The Tenant stated that, after the tenancy commenced, CC moved into the rental unit. The parties confirmed the tenancy agreement was not amended to add CC as a tenant to the agreement. The Landlord requested I amend the Application to remove CC as an applicant.

Rule 4.2 of the RoP states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The parties agreed the tenancy agreement is between the Landlord and Tenant. As such, the Tenant knew or ought to have known that naming CC as an applicant when CC was not a tenant, was not appropriate. Based on the foregoing, pursuant to Rule 4.2 of the RoP, I order the Application to be amended by removing CC as an applicant.

#### Issues to be Decided

- Is the Tenant entitled to cancellation of the 2 Month Notice?
- If the 2 Month Notice is not cancelled, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?
- If the 2 Month Notice is cancelled, is the Tenant entitled to recover the filing fee of the Application from the Landlord?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed they entered into an oral tenancy agreement that commenced on January 1, 2018 on a month-to-month basis. The parties agreed the rent was \$1,200.00 payable on the 1<sup>st</sup> day of each month. The parties agreed the Tenant was not required to pay a security and/or pet damage deposit(s). The Tenant stated he has not vacated the rental unit.

The Landlord stated he served the 2 Month Notice, which had an effective date of June 30, 2022, on the Tenant in-person on March 31, 2022. The 2 Month Notice stated the purpose for ending the tenancy was the rental unit would be occupied by the father or mother of the landlord or landlord's spouse. The Landlord stated his wife is planning to go back to work but she cannot find childcare for their one-year-old child. The Landlord stated that, as his wife cannot return to work without daycare, they cannot afford the expenses associated with the rental unit. The Landlord stated his father-in-law, RW, agreed to move into the rental unit and provide childcare to his grandchild as well as to be closer to his family. The Landlord stated RW is currently living in a mobile home that is about one-half hour away from the rental unit.

The Landlord called RW to provide testimony. RW stated he plans to move into the rental unit to watch and provide daycare for his grandson and be closer to his family. RW stated he has lived in a mobile home for the past five years. RW stated he is 65 and plans to sell his mobile home and use the proceeds from that for living expenses. RW stated the plan for him to move into the rental unit was discussed with the Landlord and the Landlord's wife sometime in February or March 2022.

The Tenant stated electricity was originally included in the rent. The Tenant stated the Landlord required him to pay the electricity for the rental unit. The Tenant stated that, when he determined that the Landlord was not entitled to withdraw an essential service, he started to recover the payments he made for electricity from the rent paid to the Landlord. The Landlord stated the Tenant has not paid the rent for June, July and

August 2022 in full, after adjusting the rent for the payments made by the Tenant for electricity.

The Tenant stated the Landlord increased the rent by \$48.00 in January 2021. The Tenant stated the Landlord did not serve him with a Notice of Rent Increase as required by the Act. The Tenant stated he paid an additional \$48.00 for one month and, with the permission of the Landlord, he recovered the additional rent he paid by deducting it from a subsequent rent payment. The Tenant stated the Landlord sent him a text dated March 13, 2022 in which the Landlord sought to increase the rent by an additional \$300.00 per month. The Tenant stated he refused to pay an additional \$300.00 per month. The Tenant stated he made an application for dispute resolution ("Previous Application") to the Residential Tenancy Branch on March 14, 2022 to make a number of claims including disputing the rent increase. The Tenant stated the Landlord served him with the 2 Month Notice on March 31, 2022.

The Landlord acknowledged he sent the Tenant a text on March 13, 2022 in which he sought to increase the rent by \$300.00 per month. The Landlord stated that, at the time he served the 2 Month Notice, he intended in good faith for the father of his wife to occupy the rental unit.

### Analysis

Sections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1)(a) In this section:

[...]

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

[...]

(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,
    - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
    - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
- [...]
- (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]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
  - (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
    - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

[emphasis in italics added]

The Landlord stated the 2 Month Notice was served on the Tenant in-person on March 31, 2022. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or April 15, 2022. The records of the Residential Tenancy Branch disclose the Tenant filed his application for dispute resolution to dispute the 2 Month Notice on April 13, 2022. I find the Tenant made his application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

*Residential Tenancy Policy Guideline# 2A* (“PG 2A”) addresses the requirements for ending a tenancy for Landlord’s use of property and the good faith requirement. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.”*

The Landlord stated the reason for ending the tenancy pursuant to the 2 Month Notice was so that his wife’s father, RW could move into the rental unit and provide childcare to his one-year-old grandson and be closer to his family. The Landlord admitted he sent a text on March 13, 2022 to the Tenant in which he sought to increase the rent by an additional \$300.00 per month. The Tenant stated he filed the Previous Application to dispute, among other things, the Landlord’s attempt to increase the rent in violation of the Act. The Tenant stated the Landlord served him with the 2 Month Notice just over two weeks later on March 31, 2022.

As stated in *Gichuru v Palmar Properties Ltd.* referred to above, good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. I find that, although it may not have been the primary reason for ending the tenancy, the Landlord was nevertheless partially motivated to end the tenancy when the Tenant refused to pay an additional \$300.00 per month for rent and made the Previous Application to dispute, among other things, the Landlord’s attempt to increase the rent without complying with the provisions of the Act. As such, I find the Landlord was not acting in “good faith” as that expression is used in section 49(3) of the Act. Based on the foregoing, I order the 2 Month cancelled. The tenancy continues until ended in accordance with the Act.

As the Tenant has been successful in the Application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

### Conclusion

The 2 Month Notice is cancelled. The tenancy continues until ended in accordance with the Act.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee for the Application.

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: August 17, 2022

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Residential Tenancy Branch