



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDCT, LRE, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on April 8, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek compensation for money owed to them, a restriction on the Landlord’s right to enter the rental unit, and reimbursement of the Application filing fee.

The Tenant amended their Application with a signed amendment form on May 11, 2022, received by the Residential Tenancy Branch on May 18. This added a subsequent Two-Month Notice, signed by the Landlord on May 12, 2022.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 5, 2022.

Both parties attended the conference call hearing. At the outset, I confirmed that the Landlord received notification of this hearing from the Tenant, as well as the Tenant’s prepared documentary evidence. Reciprocally, the Tenant confirmed they received the evidence prepared by the Landlord for this hearing.

### Preliminary Matter – relevant issues

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that

have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the Landlord.

I dismiss the Tenant’s request for monetary compensation, and restrictions on the Landlord’s entry, with leave to re-apply.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the Two Month Notice?

Should the Tenant be unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

### Background and Evidence

In their evidence, the Landlord provided a copy of the tenancy agreement they had with this Tenant. This shows the start of the tenancy on June 15, 2021 with the parties signing the agreement on that same date. The Tenant paid \$1,300 per month payable on the 1<sup>st</sup> of each month.

The Tenant described their rental unit as one “single family dwelling”, with a main level having 3 bedrooms and 1 bathroom (occupied by a separate tenant), and the Tenant’s basement suite with 2 bedrooms and 1 bathroom. A separate bachelor suite is in the home, converted from an old garage, occupied by one of the Landlord’s children.

In a prepared timeline, the Tenant described receiving a “handwritten eviction left on door step . . . requesting we vacate by July 1<sup>st</sup>”. The Tenant included this letter in their evidence, stating it “was invalid legally speaking.” This document appears in the

Tenant's evidence, dated April 7, 2022. This unsigned document has the Landlord advising "we . . . will not renew your rental agreement which ends June 15, 2022." They "made this decision for the purpose of [the Landlord's] kids moving into the house starting July 1<sup>st</sup>."

The Tenant presented their knowledge of the upper rental unit – occupied by a different tenant – receiving a notice from the Landlord as well, in similar fashion to the handwritten note. That upper rental unit note appears in the Tenant's own evidence.

The Tenant estimates the space in the home – a total of 5 bedrooms – to be occupied by the Tenant's 2 children is "excessive for 2 young children." In the hearing, the Landlord stated that their child who occupied the separate suite at the rental unit home had moved out, though intended to move back in with the other 2. The Tenant included a picture of the Landlord's current family home where their children live.

The Tenant also included messaging from the Landlord indicating that the whole house was needed for their two children (with 3 suites, 6 bedrooms in total); however, the Landlord's evidence has 3 BC drivers' licenses, with the address already changed to that of the rental unit. The Tenant also submitted a recorded call where the Landlord noted two children were moving in.

The Tenant also produced messages from the Landlord to say they don't pay enough rent. This is in the form of a text message dated April 12 wherein the Landlord noted their own costs associated with the rental unit: "How about my monthly expenses . . . To add all these [expenses] it's roughly \$5000 per month and I collect \$2980 from [the upstairs tenant and you] . . . So [you and the upstairs tenant's] monthly rent are very minimal."

In their evidence the Landlord provided a copy of the second Two-Month Notice they issued to the Tenant on May 12, 2022, setting the move-out date for July 31, 2022. The second page of this document indicated the Landlord's child or the Landlord's spouse would occupy the rental unit. The Landlord served this in person to the Tenant on May 12<sup>th</sup>. In their timeline, the Tenant confirmed they received this document.

In their evidence, the Landlord provided drivers' licenses for each of three family members who will be living at the rental unit. These are updated with the rental unit address, as proof of the Landlord's intention to have family members living there. They also provided tenancy agreements for each of the three family members with themselves

as Landlord, and in the hearing stated “I am renting to family members because they have jobs.”

### Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or close family member of the landlord intends in good faith to occupy the rental unit.” Following this, s. 55 provides that I must grant to a landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss a tenant’s Application or uphold a landlord’s notice.

Concerning the letter issued by the Landlord to the Tenant on April 7, 2022, that letter contains neither the form nor content that is legally required as per s. 52 of the *Act*. This letter in no way equates to a legal notice to end tenancy and is null and void.

In this matter, the Landlord bears the onus to prove the reason for ending the tenancy is valid and undertaken in good faith.

I find the Landlord’s have not met the burden to show they issued the May 12, 2022 Two-Month Notice in good faith. I am not satisfied that the Landlord’s family members’ need for the rental unit is legitimate.

I make this decision for the following reasons:

- It is not clear whether the Landlord intends to have 2 or 3 of their children in place in the rental unit. The third child already occupied one part in the rental unit home, so it is unclear if the need for that child forms part of the Landlord’s reason to issue the One-Month Notice. This is one detail added to others below on which the Landlord’s evidence was not clear.
- The rental unit home accommodates 2 tenants and their families, and is a large space, consisting of 6 bedrooms. The Landlord did not fully explain why there was a need for 2 of their family members (as forming the original reason for issuing the Two-Month Notice) to have that much space in a home.
- It is odd that the Landlord would have a tenancy agreement with family members who would pay them rent. This presumably is an arrangement where they have

family members needing that living space, currently not living independently, but then seemingly able to pay rent on a regular basis to their own parent.

- The Landlord presented to the Tenant in a text message that the current rent they receive from the Tenant (as well as the upstairs tenant) was not enough to cover their own expenses. Their expenses, as stated in that text, is “roughly \$5000 month” and they collect “\$2,980” from both the Tenant and the upstairs tenant combined. The tenancy agreements they presented with family members, signed June 18 for the tenancy starting September 1, total \$2,500. This would represent a loss of approximately \$480 per month for the Landlord, not insignificant where they are pleading with the Tenant in previous messages over the expenses to them for running the rental unit. This is a pure loss of income for the Landlord, unexplained by them when the onus is on them to do so.
- The fact that they want family members to start a tenancy for September 1 does not match to the end-of-tenancy date they gave the Tenant here: July 31, 2022. Originally this date was June 30, 2022. The discrepancy in dates is one more detail factoring into the total picture of the Landlord issuing the Two-Month Notice under false pretexts.
- Two of the Landlord’s family members changed their addresses on their drivers’ licenses even though the plan is for them to reside in the rental unit from September 1<sup>st</sup> as per the tenancy agreements that the Landlord presented in their evidence. This is incorrect information on their drivers’ licenses as of the date the Landlord provided this evidence to the Residential Tenancy Branch, on July 19, 2022, and those family members did not yet live in the rental unit.

This is fraud where the Landlord’s family members provided false information to ICBC; and the Landlord is relying on that false information for a favourable outcome to this dispute resolution hearing. I caution the Landlord that fraud is a serious criminal matter, subject to conviction and/or a fine as per statute. ICBC takes the matter of fraud very seriously in any manifestation. This act alone diminishes the weight of all the Landlord’s evidence in this hearing, and they bring no credibility to this matter involving parties’ legal rights and obligations.

For the reasons above, the Two-Month Notice is thus cancelled, and the tenancy will continue.

As the Tenant was successful in this Application, I find they are entitled to recover the \$100 filing fee. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

### Conclusion

For the reasons above, I order that the Two-Month Notice issued by the Landlord on May 12, 2022 is cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 31, 2022

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Residential Tenancy Branch