



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant: CNL, RP, RR, FFT  
Landlord: OPL, FFL

### Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property dated April 9, 2022 (the "First Two Month Notice"), pursuant to section 49;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Landlord's Use of Property, pursuant to sections 49 and 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Tenant H.T. filed an amendment (the "First Amendment") on May 6, 2022 wherein he corrected the name of the second tenant listed in the tenant's application for dispute resolution (Y.L.) who is tenant H.T.'s mother.

Tenant H.T. filed a second amendment on May 26, 2022 (the "Second Amendment") wherein he made an application to cancel a subsequent Two Month Notice to End Tenancy for Landlord's Use of Property dated May 13, 2022 (the "Second Two Month Notice").

Tenant H.T., the landlord and the landlord's counsel attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states:

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Both parties were advised that their evidence must be presented, and that evidence not presented may not be considered.

Both parties confirmed their email addresses for service of this decision and order.

#### Preliminary Issue- Naming of Parties

The tenant named himself and Y.Z. as tenants in the tenant's application for dispute resolution.

Counsel for the landlord submitted that only tenant H.T. is a tenant and that Y.Z. is an occupant. Counsel requested that Y.Z. be removed from the proceedings. Counsel for the landlord submitted that the tenancy agreement only states that H.T. is a tenant. The tenancy agreement was entered into evidence on only lists H.T. as a tenant and is signed by the landlord and tenant H.T.

The tenant testified that he came to the subject rental property first and that the landlord was aware that his mother was also going to live in the subject rental property. The tenant confirmed that he is the only tenant listed on the tenancy agreement and the only tenant who signed the tenancy agreement.

Counsel for the landlord submitted that there is no problem with Y.Z. living at the subject rental property, but that she is an occupant and not a tenant.

Residential Tenancy Policy Guideline #13 states:

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Based on the testimony of both parties and the tenancy agreement entered into evidence, I find that the tenant H.T. is the sole tenant and that Y.Z., who moved in after tenant H.T. signed the tenancy agreement, is an occupant. Pursuant to my above findings and section 64 of the *Act*, I remove Y.Z. from this application for dispute resolution. For the remainder of this decision, tenant H.T. will be referred to as “the tenant”.

#### Preliminary Issue- Service

Both parties agree that they each received the other’s application for dispute resolution and evidence in advance of today’s hearing. The landlord testified that she received the tenant’s two amendments, in advance of today’s hearing. Neither party raised any service issues. Pursuant to section 71 of the *Act*, I find that both parties were sufficiently served for the purposes of this *Act*, with all documents required for today’s hearing because service was acknowledged by both parties and no service issues were raised in the hearing.

#### Preliminary Issue- Claims Not Pursued

Counsel for the landlord submitted that the landlord is not pursuing an Order of Possession based on the First Two Month Notice because only the first two pages of that notice were served on the tenant. The tenant agreed that only the first two pages of the First Two Month Notice were served on him.

Counsel for the landlord submitted that the First Two Month Notice is cancelled.

Pursuant to the above submissions, I find that the First Two Month Notice is cancelled and of no force or effect.

### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the Second Two Month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Second Two Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the Second Two Month Notice and recovery of the filing fee for this application.

### Issues to be Decided

- Is the tenant entitled to cancellation of the Second Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
- Is the tenant entitled to recover the filing fee for the tenant's application, from the landlord, pursuant to section 72 of the *Act*?
- Is the landlord entitled to an Order of Possession for the Second Two Month Notice, pursuant to sections 49 and 55 of the *Act*?
- Is the landlord entitled to recover the filing fee for the landlord's application from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my

findings are set out below. Evidence that was not presented may not have been considered.

Both parties agreed to the following facts. This tenancy began on November 1, 2021 and the tenant is currently residing in the subject rental property. This tenancy originated as a fixed term tenancy ending on May 1, 2022 and reverted to a month to month tenancy after that date. Monthly rent in the amount of \$1,500.00 is payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

It was undisputed that the landlord initially served the tenant with a letter to end tenancy at the end of the fixed term. The letter is not a Residential Tenancy Branch Form and does not meet the requirements to end a tenancy under the *Act*. The letter dated April 3, 2022 was entered into evidence, it states in part:

THIS IS OFFICIAL NOTICE that your current lease will not be renewed for the property located at [subject rental address].

The tenant testified that he rejected the unofficial notice provided by the landlord in a text dated April 6, 2022. The April 6, 2022 text was entered into evidence and states:

I reject your unofficial non renewal notice letter, and the time of move out is not legal. Please use the official required documentation to terminate the lease and resend it to me.

The landlord responded on April 9, 2022 via text as follows:

RTB notice to end tenancy has been delivered to your suite.

Counsel submitted that the First Two Month Notice was served on April 9, 2022; however, as all four pages were not served, it was cancelled and the Second Two Month Notice was posted on the tenant's door on May 13, 2022. The tenant confirmed receipt of the Second Two Month Notice on May 13, 2022. The First Two Month Notice purported to end the tenancy because the rental unit will be occupied by the father or mother of the landlord or landlord's spouse.

The Second Two Month Notice states that the tenancy will end because the rental unit will be occupied by the father or mother of the landlord or landlord's spouse. The Second Two Month Notice is dated May 13, 2022 and has an effective date of July 31, 2022.

Both parties agree that the subject rental property is divided into three units:

1. Basement suite- occupied by different tenant(s) (the "basement unit"),
2. The subject rental property (the "subject rental property"), and
3. A third unit that the landlord's parents currently occupy (the "parent's unit").

Counsel for the landlord submitted that the parent's unit is also used as an office by the landlord's husband and was used as an office before the landlord's parents moved in. Counsel for the landlord submitted that the parent's unit has stairs and the subject rental property does not. The tenant entered into evidence a photograph of the outside of the subject rental house. The tenant circled the portion of the house in which the subject rental property is located and circled the portion of the house the parent's unit is located. The photograph shows that the parent's unit is two stories and the subject rental property is one story.

The tenant testified that he has never seen the landlord's husband use the unit the tenant's parents are currently living in as an office.

The landlord testified that the parents unit has stairs, as does the basement unit. The landlord testified that the subject rental property does not have stairs and is all on one floor. The tenant testified that the subject rental property does have stairs. No photographs of the inside of the subject rental property were entered into evidence. The tenant did not elaborate on how many stairs were in the subject rental property.

Counsel submitted that as the tenant received the landlord's statement in the evidence package, the tenant was aware that the landlord's mother intended to use the subject rental property because it does not have stairs. The tenant could have provided photographs of the stairs he alleges exist in the subject rental property but elected not to.

Counsel for the landlord presented a signed statement of the landlord which was entered into evidence. Counsel for the landlord submitted that the landlord's parents planned to return to the subject rental city from out of country in May of 2022 and that they wanted to move into the subject rental property rather than the unit in which they

are currently residing because the subject rental property does not have stairs. Counsel for the landlord submitted that the landlord's mother has difficulty climbing stairs because of a problem with her left knee and because she suffers from neck pain which causes dizziness.

Counsel for the landlord presented a signed statement from the landlord's mother which states that:

- she is suffering from neck and knee problems and that these problems make it difficult for her to go up and down stairs,
- the parent's unit currently has stairs and does not have a walk in shower,
- the subject rental property does not have stairs and has a walk in shower which would be better for her medical needs, and
- she has been attending acupuncture treatment in the subject rental city to treat her neck problem and associated dizziness.

Counsel for the landlord presented a diagnosis certificate in Chinese which was translated by a certified translator. The diagnosis certificate from a hospital states:

- the landlord's mother is 70 years old as of the date of the doctor visit on May 13, 2022,
- Department: Neurosurgery
- Main condition is: Neck pain for more than 1 month, knee pain for half a year
- Current diagnosis : Mixed cervical spondylosis, knee joint disease, knee cruciate ligament rupture
- Doctor's opinion: 1. Pay attention to the posture of the neck and continue the current physical therapy; 2. Reduce the weight bearing of the knee joint; 3. Avoid going up and down stairs; 4. Regular outpatient follow up, to determine further treatment measures.

The tenant testified that he has witnessed the landlord's mother walking smoothly on slopes, working in the garden and watering the garden. The tenant testified that the landlord's mother walks like a young person. The tenant testified that he has witnessed the landlord's mother sitting cross legged with her head down over a screen. The tenant testified that the medical reports are not true.

The landlord testified that her mother is in her 70s with knee and neck problems and does not walk like a young person. The landlord testified that her mother do some watering and other work in the garden but that she employs a gardener who does the majority of the work.

On the diagnosis certificate the landlord's mother's contact number, ID Number and employer/address are redacted.

The tenant testified that the diagnosis certificate is suspect because of the above redactions. The tenant testified that many people in China have the same name as the landlord's mother and that the diagnosis certificate could be from another person.

Counsel for the landlord presented the landlord's mother's acupuncturist clinical chart dated June 11, 2022 which states:

- Differentiated Syndromes:
  - Cervical spondylosis causing dizziness
  - Ligament damage causing pain

The treatment record attached to the clinical chart records seven appointments between June 11, 2022 and July 23, 2022.

The tenant testified that he witnessed the landlord's mother's acupuncturist attend at the subject rental property and that he "does not know about their relationship". The tenant testified that the acupuncture clinical chart is untrue.

The landlord testified that the acupuncturist attends at the subject rental property to treat her mother because of her mother's pain and dizziness. The landlord testified that she and her mother do not have a personal relationship with the acupuncturist and pay him for his services.

The tenant testified that if the landlord's mother's medical problems are as serious as alleged by the landlord, she should go to a hospital or see a family doctor, not an acupuncturist.

Counsel submitted that the landlord is acting in good faith and served the tenant with the notices to end tenancy so that her elderly mother, who has documented neck and knee problems, can live safely in a property without stairs.

The tenant testified that the landlord is only trying to end the tenancy because he has reported many items that need repair and that the landlords do not want to fix things. The tenant testified that all of the items he requested to be repaired have been repaired except the kitchen range hood.



Both parties agree that on April 2, 2022 the landlord's husband attended at the subject rental property to inspect the range hood. The landlord testified that her husband found that the tenant had not cleaned the oil cups and that the filters were very dirty. The landlord entered into evidence a letter to the tenant dated April 11, 2022 which states in part:

During inspection of the range hood fan on 2<sup>nd</sup> April, it was observed:

- Range hood fan is in working condition and functioning as designed.
- The range hood filters were clogged and has not been cleaned. The oil cups had oil.
- We took the filters/oil cups out to clean/service them. Please note that it is the tenant's responsibility to clean the filters on regular basis. Please note that clogged filters degrade the range hood fan capacity and adversely effects the motor. These filters will be installed on 14<sup>th</sup> April, 2022 @ 11 am. Please arrange necessary access accordingly.
- Also please note that the direction of the range was adjusted as desired/recommended by you. The range hood direction can be changed at any time with property care and minimum effort as shown to you. The range hood will be placed in the original direction while clean filters will be installed.

The tenant testified that on April 2, 2022 he and the landlord disagreed on the requested range hood repairs/replacement and the landlord told him that he was not suited as a tenant and then the next day he received the April 3, 2022 letter declining to renew the lease. The above testimony was disputed by the landlord.

### Analysis

Based on the Second Two Month Notice entered into evidence and the testimony of both parties, I find that the tenant was served with the Second Two Month Notice on May 13, 2022, in accordance with section 88 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a)the individual's parent, spouse or child, or (b)the parent or child of that individual's spouse.

Residential Tenancy Policy Guideline 2A explains the 'good faith' requirement 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 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)).

....

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.

I find that there is sufficient evidence that the landlord honestly intends to use the rental unit for her parents. In making this finding, I have taken into consideration all of the testimony of each party and all of the documentary evidence presented in this hearing.

I find the medical evidence provided by the landlord to be compelling and reliable. I find, on a balance of probabilities, that the landlord's mother has neck and knee problems that make using stairs difficult.

I find that the tenant's submissions pertaining to the veracity and reliability of the landlord's mother's medical records to be baseless and an unconvincing attempt to discredit the landlord's well presented, credible documents. The tenant's testimony did not bear and air of reality and was not credible.

Based on the testimony of both parties and the photographs of the exterior of the subject rental property, I find on a balance of probabilities, that the subject rental

property is on one floor, and while it may have some steps, it does not have a full flight of stairs like the parent's unit.

Based on the testimony of both parties, I find that the majority of the repairs requested by the tenant have been completed. I find that the landlord has shown through the completion of all requested repairs, save the range hood, that the landlord is not attempting to shirk her duty to repair and maintain the subject rental property. I find that the landlord acted reasonably in inspecting the range hood and in cleaning the filters and oil cups.

I find that the range hood issue did not play a role in the service of the Second Two Month Notice (or any of the previous notices) and that the landlord did not have an ulterior motive in serving the Second Two Month Notice. I find that the landlord has proved, on a balance of probabilities, that she is acting in good faith and honestly intends for her parents to move into the subject rental property which has fewer stairs and a walk-in shower, which the landlord's mother requires due to her medical issues.

Pursuant to sections 49(3) and 55 of the *Act*, I uphold the Second Two Month Notice and award the landlord an Order of Possession effective at 1:00 p.m. on August 31, 2022.

The tenants' application is dismissed without leave to reapply.

As the landlord was successful in the landlord's application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant. As the tenant was not successful in the tenant's application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on August 31, 2022**, which should be served on the tenant.

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

The landlord is entitled to retain \$100.00 from the tenant's security deposit, pursuant to section 72 of the *Act*.

The tenant's application for dispute resolution is dismissed without leave to reapply.

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 24, 2022

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Residential Tenancy Branch