



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated April 11, 2022 (the "Two Month Notice") pursuant to section 49.

The Landlords and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties did not raise any issues with respect to service of dispute resolution documents. I find the Landlords to be sufficiently served with notice of this hearing pursuant to section 71 of the Act.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Addition of Party

This application initially listed AS as the sole landlord. KK is AS's spouse. KK joined the hearing part-way through and testified that she is one of the joint owners of the rental unit, the other owner being one of the Landlords' sons. As such, I have added KK as a Landlord pursuant to Rule 7.13 of the Rules of Procedure.

### Issue to be Decided

Are the Tenants entitled to cancel the Two Month Notice?

### Background and Evidence

This tenancy commenced on April 1, 2008 and is month-to-month. Rent is \$1,200.00 due on the first day of each month. The Tenants did not pay a security deposit. The parties do not have a written tenancy agreement.

A copy of the Two Month Notice has been submitted into evidence. The Two Month Notice is dated April 11, 2022 and has an effective date of June 15, 2022. The reason for ending the tenancy is that the “rental unit will be occupied by the landlord or the landlord’s close family member”, in this case, “the landlord or landlord’s spouse”.

The Landlords’ evidence indicates that they are retired seniors who live abroad with their children and grandchildren.

AS testified that previously the Landlords were busy working, but now they want to enjoy the rental unit for themselves and live in the place. AS confirmed the Landlords retired approximately 5 years ago.

AS testified that the Landlords come and go between the two countries. AS testified that the Landlords are currently here for at least 4 weeks, and if they have the rental unit back, they will stay for at least 6 months. AS testified that the Landlords are currently staying with their relative PP, who lives close to the rental unit. AS testified that the Landlords want to have their own place to stay in.

AS testified the Landlords are not going to rent the rental unit to anyone else. AS stated that even if the rental unit will be “empty”, the Landlords want to have the rental unit back. AS stated that the Landlords did not want money.

KK also testified that the Landlords need the rental unit for themselves, their children, and their grandchildren. KK testified that the Landlords have worked hard and now that they are retired, they want to enjoy the weather and the rental property. KK stated that the Landlords did not need more rent.

KK testified the Landlords would like to spend summers and at least 8 months of the year at the rental unit. KK testified that the Landlords’ children and grandchildren can visit during holidays since they have work and school.

AS testified that they do not want to increase the rent and just want the property back for themselves. AS testified that the Tenants took money out of rent for repairs. AS acknowledged that the house is old. AS stated the Landlords want to go in there and “have a look”, do what the Landlords need to do to live in there. AS testified that the house is not fit to be rented and that things keep breaking. AS testified that the Landlord might “knock” the rental unit down and build a smaller house.

The Landlords confirmed they do not own any other property in British Columbia.

In response, the Tenants submitted that the Landlords live abroad and disputed that the Landlords intend to move into the rental unit. The Tenants argued that the Landlords want to rent out the place for more rent now that the rent has gone up.

The Tenants stated that the rental unit is 14 years old and a lot of things are breaking down. The Tenants testified that half of the house currently does not have power. The Tenants testified that their door has been broken for 3 months and needs to be replaced. The Tenants testified that they are unable to use the security system. The Tenants argued that the Landlords are not fixing these issues. The Tenants testified that there was a problem with the hot water tank which caused the Tenants do not have hot water for 2 weeks, which the Tenants had to replace. The Tenants stated that dealing with the repair issues has been complicated because the Landlords do not live here.

The Tenants testified that they had previously been told the Landlords might be selling or moving in. The Tenants testified that after they learned the Landlords wanted to evict them, they sent a WhatsApp message to AS on March 25, 2022 at 11:11 am as follows:

*I will need you to put in writing what your plans are. If you're selling you have to give us 6 months notice or if you're moving in.*

The Tenants testified that they received the following response from AS (portions redacted for privacy):

*[Tenant DH], if you've been spending money to do this work on the house, we know what the rent is up there. The rent is twice as what you pay us. We will give you 2 months' notice from 1<sup>st</sup> April. From now on you do any work you ask [PP].*

The Tenants testified that PP was mediating the situation between the Tenants and AS. The Tenants testified that PP said the Tenants could stay if they paid more rent.

The Tenants testified that they then sent the following message to AS on March 25, 2022 at 1:46 pm:

*I'm not doing any work, I'm trying to figure out where to move. You have to give us proper notice. You have to abide by the Canadian BC laws. Are you selling it or are you moving into it?*

The Tenants testified that AS did not respond to this message.

The Tenants testified that on April 15, 2022, they messaged AS again and offered to pay more rent. The Tenants testified that on April 26, 2022, they messaged AS to ask for a response. The Tenants testified that on May 6, 2022, they messaged AS again, saying “Are we able to stay if we pay more money or are you moving in?” The Tenants testified they did not receive a reply to this message.

In their application, the Tenants questioned whether the Landlords would really move into the rental unit.

### Analysis

Pursuant to section 49(3) of the Act, a landlord is permitted to end a tenancy if the landlord or a close family member of the landlord intends, in good faith, to occupy the rental unit.

Section 49(1) of the Act defines a landlord as an individual who, at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest. Under section 49(1), a “close family member” includes an individual’s spouse.

In this case, the Landlords testified that the rental unit is owned jointly by KK and the one of the Landlords’ sons, which I understand to be 50-50 ownership. Although the Landlords have not provided any documents to prove this, I accept their testimony and find that this is likely the case. Based on the foregoing, I find that KK qualifies as a “landlord” under section 49 of the Act and that AS qualifies as a “close family member” of KK.

Section 49(7) of the Act requires the notice given by the landlord under section 49(3) to comply with section 52, which states:

#### **Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant’s notice]*, state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and  
(e) when given by a landlord, be in the approved form.

I have reviewed a copy of the Two Month Notice and find that it complies with the requirements set out in section 52. I note there is a discrepancy on the Two Month Notice as it does not include KK and the Landlords' son as landlords, only AS. I note that section 1 of the Act defines a "landlord", in relation to a rental unit, to include not only the owner of the rental unit, but also the owner's "agent" or "another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under the Act, the tenancy agreement or a service agreement". I find that AS, as an agent of KK, may be a "landlord" within the meaning of section 1 of the Act, and hence may be named as such for the purposes of the Two Month Notice and this application. I accept the Landlords' evidence that both AS and KK are the proposed occupiers of the rental unit. As I have found AS to be KK's close family member, a "landlord" under section 1 of the Act, and a proposed occupier of the rental unit, I do not find a failure to include KK and the Landlords' son on the Two Month Notice to be fatal to its validity in this case.

Section 49(2)(a) further requires that the effective date of a landlord's notice under section 49(3) 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.

Based on the parties' testimonies, I find that the Tenants were served with a copy of the Two Month Notice on April 15, 2022, in accordance with section 88 of the Act. As such, I find the effective date of the Two Month Notice does not comply with the requirements above as the earliest effective date in the circumstances would have been June 30, 2022. Under section 53(1) of the Act, if a landlord gives notice to end a tenancy effective on a date that does not comply with the above requirements, the effective date stated in the notice is deemed to be the earliest date that complies. Therefore, I find the effective date of the Two Month Notice is deemed to be June 30, 2022 pursuant to section 53(1).

Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy for landlord's use with 15 days of receiving such notice. In this case, the Tenants had until April 30, 2022 to dispute the Two Month Notice. Records of the Residential Tenancy Branch indicate that the Tenants submitted this application on April 20, 2022. I find the Tenants made this application within the 15-day dispute period required by section 49(8)(a) of the Act.

When a tenant makes an application to dispute a two month notice to end tenancy, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the reasons set out in the notice and to demonstrate good faith in issuing the notice.

Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member ("Policy Guideline 2A") states that to "occupy" under section 49 of the Act means "to occupy for a residential purpose". This means the landlord or their close family member must intend in good faith to "use the rental unit as living accommodation or as part of their living space".

Policy Guideline 2A further states that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused. In other words, a landlord cannot issue a two month notice to end tenancy for "vacant possession", or just to get the rental unit back without occupying it for a residential purpose.

According to Policy Guideline 2A, 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.

Regarding the requirement of good faith, Policy Guideline 2A states:

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)).

In this case, I am not satisfied that the Landlords have met their onus to prove the reason for issuing the Two Month Notice and to demonstrate good faith.

First, I find there is a lack of clear intention for the Landlords to occupy the rental unit for a residential purpose. I find AS had stated that the Landlords do not want money and want the rental unit back, even if the rental unit will be “empty”. As noted above, a landlord cannot issue a notice to end tenancy under section 49 of the Act for vacant possession of the rental unit. Furthermore, I find AS had stated that the Landlords might knock the rental unit down and build a new house. I find that this also would not accomplish the stated objective of occupying the rental unit for a residential purpose. A landlord cannot issue a two month notice under section 49(3) of the Act to end tenancy to demolish the rental unit. A landlord wishing to end a tenancy to demolish a rental unit must have all the necessary permits approvals required by law and make an application to the Residential Tenancy Branch under sections 49(6) and 49.2 of the Act. That is not the application before me in this hearing.

Second, I find the Landlords have not provided sufficient evidence to explain why are issuing the Two Month Notice at this time. While I find the Landlords to have indicated that they wish to enjoy the rental unit in their retirement, I also find the Landlords acknowledged that they have already been retired for several years. I find the Landlords have not clearly indicated other reasons or changes in circumstance for the Landlords to move into the rental unit.

Third, I find the evidence suggests the presence of an ulterior purpose for ending the tenancy. I find that the parties have an ongoing disagreement about repairs relating to the rental unit. I find the timing of the issuance of the Two Month Notice to coincide with the parties’ disagreement about repairs to the rental unit. As stated above, a landlord cannot issue a notice to end tenancy under section 49 of the Act in order to “avoid obligations under the [Act] 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))” (emphasis added). I find AS had stated that the rental unit is not fit for renting. I do not find the Landlords to have submitted evidence to show that they are complying with their maintenance and repair obligations under the Act. As such, I find the Landlords have not provided sufficient evidence to dispel the concern that the issue of repairs may be an ulterior purpose for ending the tenancy.

Furthermore, I accept the Tenants' evidence that AS had made a comment about rent being twice the amount paid by the Tenants, and that prior to the hearing, the Landlords had refused to explain why the Tenants were being asked to vacate the rental unit. I find that this type of response is less indicative of good faith on the part of the Landlords.

As stated 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".

In this case, I am unable to conclude that the Landlords intend to occupy the rental unit for a residential purpose in good faith without any dishonest or ulterior motive. Due to the above-mentioned factors, including a lack of clear intention for the Landlords to occupy the rental unit for a residential purpose, insufficient reasons for the timing of issuing the notice, the parties' ongoing disagreement about repairs relating to the rental unit, and AS's comment about rent being twice the amount paid by the Tenants, I am left doubtful as to whether the Landlords issued the Two Month Notice in good faith. As such, I conclude that the Landlords have not met their onus of proof required under section 49 of the Act.

Accordingly, I order that the Two Month Notice be cancelled and of no force or effect.

### Conclusion

The Two Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

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: September 18, 2022

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Residential Tenancy Branch