



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, PSF, OLC, FFT

### Introduction

The tenants file an application seeking the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 49 to cancel a Two-Month Notice to End Tenancy (the “Two-Month Notice”);
- an order pursuant to s. 65 that the Landlord provide services or facilities;
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- return of their filing fee pursuant to s. 72.

M.M. appeared as the Tenant. He was joined by S.E. as his agent. The Tenant had the assistance of a translator, F.K., who certified she was able to translate Farsi to English and vice versa on behalf of the Tenant. P.K. appeared as the Landlord. He was joined by F.P. as support, though F.P. provided no evidence and was not affirmed at the outset of the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that the Two-Month Notice was served on the Tenant, though was unclear on the method or date it was served. The Tenant acknowledges receiving the Two-Month Notice, first by way of registered mail on April 25, 2022 and second by way of having it posted to his door on April 27, 2022. Based on the acknowledged receipt of the Tenant, I find that the Two-Month Notice was served in accordance with s. 88 of the *Act*.

The parties advise that they served their application materials on the other side within the proscribed time limits. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the Act that the parties were sufficiently served with the other's application materials.

### Preliminary Issue – Tenants' Claims

The Tenant applies for various and wide-ranging relief. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

The primary issue in the Tenants' application is whether the tenancy ends or continues based on the enforceability of the Two-Month Notice. The other claims, to provide services or an order that the Landlord comply, are secondary as these types of orders would only be granted if a tenancy were to continue.

I find that the Tenants' claims under ss. 62 and 65 are not sufficiently related to the primary issue and are secondary to the outcome of the enforceability of the Two-Month Notice. I sever these two claims from the application pursuant to Rule 2.3 of the Rules of Procedure. Depending on whether the tenancy ends or continues, they will be dismissed either with or without leave to reapply.

### Issues to be Decided

- 1) Should the Two-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Are the Tenants entitled to the return of their filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on May 1, 2020.
- Rent of \$2,000.00 is payable on the first day of each month.
- The Landlord holds a security deposit of \$1,000.00 in trust for the Tenants.

A copy of the tenancy agreement was put into evidence. The Tenant confirmed that he still occupies the rental unit.

The Landlord indicates that he plans to occupy the rental unit as he lived there prior to the tenancy and has health and financial issues that required him to downsize. The Landlord indicated he has health issues and diabetes, though indicates that his health began to deteriorate approximately 10 years ago. The Landlord testified that he currently lives in another property, which he described as a four-bedroom house. The Landlord says that he can get higher rent from where he is currently living, which will assist his finances. The Landlord further says that he lives alone and that the rental unit has two-bedrooms, which will meet his needs.

The Tenant argues that the Landlord issued the Two-Month Notice in bad faith. The Tenant testified that he worked with the Landlord for some time and that he knows the Landlord to have six rental units, including a one-bedroom suite that is currently empty. The Tenant testified that a dispute arose with the Landlord after his mother moved into the rental unit sometime in the fall of 2021. The Tenant says that the Landlord insisted on signing a new tenancy agreement and asked for an additional \$500.00 per month in rent. The Tenant argued that the Two-Month Notice was served after this dispute.

The Landlord acknowledged the Tenant's mother moved into the rental unit and argued that she was an additional occupant that ought to have been reflected in the tenancy agreement. The Landlord denied having 6 rental units and denied that there was a unit he could occupy, though says that there is a suite in which there is no occupancy permit. The Landlord emphasized he wishes to move back into his home.

### Analysis

The Tenant applies to cancel the Two-Month Notice.

Pursuant to s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice where the landlord or a close family member intends, in good faith, to occupy the rental unit. Section 49(1) of the *Act* defines a close family member as an individual's parents,

spouse, or child or the parent or child of that individual's spouse. When a tenant receives a notice issued under s. 49(3) of the *Act*, they may either accept the end of the tenancy or may file an application disputing the notice within 15 days of receiving it as required under s. 49(8).

Policy Guideline #2A provides the following guidance with respect to the good faith requirement imposed by s. 49:

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.

In this instance, the Landlord testified that he is downsizing to a smaller space to address his financial circumstances and due to his poor health. The issue with the Landlord's argument is that it is removed from the context in which the Two-Month Notice was served. The written submissions from both parties show a landlord-tenant relationship that has become frayed. The Landlord's evidence includes allegations to repeated late rent payments and a warning letter regarding the Tenant's use of an outdoor outlet for charging an electric car.

The Tenant testified to a dispute with the Landlord involving his mother moving into the rental unit as an additional occupant and then a dispute regarding the Landlord's request for increased rent. The Landlord acknowledged there was a dispute with respect to the Tenant's mother moving into the rental unit and did not dispute the Tenant's assertion that additional rent was requested. It appears more likely than not that the Landlord did request \$500.00 per month in additional rent after the mother moved into the rental unit.

Policy Guideline #2A is clear that the Landlord must demonstrate they intend to do what they say without ulterior motive. In the present instance, I am not satisfied the Landlord has done so. The timing of the Two-Month Notice coincided with the degradation of the landlord-tenant relationship following requests for additional rent due to an additional occupant. The Landlord may be entitled to ending a tenancy for having too many occupants or for repeated late rent. However, the Landlord is not entitled to do so under s. 49 of the *Act*.

I find that the Landlord has failed to demonstrate his good faith intention to occupy the rental unit. Accordingly, I grant the Tenants' application and cancel the Two-Month Notice, which is of no force or effect.

### Conclusion

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

The Tenants claims that were severed pursuant to Rule 2.3 of the Rules of Procedure, being those under ss. 62 and 65 of the *Act*, are dismissed with leave to reapply.

The Tenants were successful in their application. Accordingly, I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the

Landlord pay the Tenants' filing fee. I direct pursuant to s. 72(2) of the *Act* that the Tenants withhold \$100.00 from rent payable to the Landlord on **one occasion** in full satisfaction of their filing fee.

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 14, 2022

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Residential Tenancy Branch