



# 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 by way of conference call concerning an application made by the tenant seeking an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlords for the cost of the application.

The tenant attended the hearing, accompanied by the tenant's spouse. One of the named landlords also attended and represented the other named landlord. The tenant and the landlord each gave affirmed testimony and were given the opportunity to question each other and to give submissions. The tenant's spouse did not testify or take part in the hearing.

At the commencement of the hearing the tenant advised that some of the landlord's evidentiary material was not provided to the tenant, which was not disputed by the landlord. Any evidence that a party wishes to rely on must be given to the other party, even if they already have a copy, because it is important for parties to know what I have before me. Since the landlords have not provided a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property to the tenant in the evidence package, I decline to consider it. The parties agree that all other evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 14, 2022 was issued in accordance with the *Residential Tenancy Act*, and in good faith?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on or about December 12, 1998, which is when the Application for Rent was completed, and the tenant still resides in the rental unit. Rent was initially \$650.00 payable on the 1<sup>st</sup> day of each month, which has been increased and is now about \$1,100.00; the landlord is not certain stating that his mother looks after that, but there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite between an upper unit and a basement suite, and all 3 suites are currently rented. Neither named landlord currently resides on the rental property. Copies of the Application For Rent Of Suite and Conditions of Tenancy documents have been provided as evidence for this hearing.

The landlord further testified that on July 15, 2022 the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property by registered mail. Pages 1 and 2 only of the 4-page form have been provided for this hearing by the tenant. It is dated July 14, 2022 and contains an effective date of vacancy of September 30, 2022. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse *and* the child of the landlord or landlord's spouse.

The landlord testified that his mother, the second named landlord in the application, is almost 80 years old and will be moving into the rental unit. She is not that healthy, and if need be, the landlord will also move in to help her, which is why both boxes are checked in the Notice. The landlord does not currently reside with his mother. The rental unit has 1 bedroom and another room that could be a bedroom as well. The rental unit has less stairs, there will be less cleaning for the landlord's mother, and will allow her to supervise the other suites. She had a car accident more than a year ago, and can't raise her hands much over her head, has chronic pain in her shoulders and now has fluid in her lungs and tires out. She can go halfway up the stairs then has to take a break. The rentals are one of her main sources of income, and there have been complaints from neighbours about a tenant's behaviour who upset a neighbour 2 houses over.

**The tenant** testified that the parties had attended a hearing previously, and a copy of the resulting Decision has been provided for this hearing. It is dated September 28, 2020 and concerned an application made by the tenant seeking to cancel a previous Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant testified that the landlord issued this Notice out of revenge for losing the first attempt to evict. The landlord knew that neither he nor his brother are landlords. The Decision states that the landlord who attended this hearing had issued the Notice, and testified that the home was owned by himself, his mother and his brother, and that his niece would be residing in the rental unit, with no ulterior motive. It also states that the landlord had testified that this particular rental unit was selected because it was the nicer suite and that was the only reason to end the tenancy. He was never a landlord and started the proceeding causing maximum hurt on the tenants. A copy of a Title Search has also been provided for this hearing.

Since then, the tenants have been harassed by the landlord; it bothers him a lot that the tenant didn't move out like he wanted, and now he's looking for another option, using another Notice as an instrument to evict unwanted people. The tenant was also witness to another eviction 10 years ago and another a year ago where the landlord wanted people including the tenant to help him evict people. A number of letters and emails have been provided as evidence for this hearing.

The landlord's mother, who is the owner, attends at the rental unit every 2 weeks unannounced and the tenant doesn't know why. The tenants don't smoke or drink or party or make noise. In his testimony, the landlord mentioned that the tenants have been bad tenants, and if that is so, this is the wrong way to evict and the landlord should have evidence to back up the claim. The tenant believes the landlord has an ulterior motive and is not trustworthy or honest.

The landlord has also introduced a letter for this hearing indicating that the tenant broke his trust, but the tenant does not know what he's talking about. The tenant is not his business partner or family.

The landlord is not a landlord. The owner gave him 1% equity but that does not make him a landlord, and there is no Title Certificate. The paper is baseless and only issued between the owner, the landlord who attended this hearing and his brother, which was done after the previous Notice was issued in 2020. It does not make the landlord's son an owner or landlord who can evict people and bring in their own people. In the last hearing, the landlord said, "I'm like a landlord," but he is not. If the document provided

by the landlord makes him a landlord, then his wife and her parents are qualified to move in and the system cannot let this happen.

The landlord has not explained what his mother will do with her current residence, and the landlord has to provide a reason for that.

#### SUBMISSIONS OF THE LANDLORD:

The tenant has raised a lot of issues about revenge, but there is no evidence of that, and it's not about that. It's about the landlord's mother wanting to move in where she can manage better. It's not about complaints even though the landlord raised it in the evidence and testimony.

#### SUBMISSIONS OF THE TENANT:

The tenant refers to a 3-page letter provided by the landlord, which is all about the tenant, but nothing, or a small section about the owner moving in. The tenant received a letter 1 ½ months ago saying the owner will be moving in. However the landlord who attended this hearing has a problem with truth, swearing in both hearings and blamed the previous Arbitrator for siding with the tenant in a wrongful way, preventing his niece from having a good life. What is the difference if the landlord gives this rental unit to his niece for free, or uses the tenant's rent money to rent another place for her.

The Notice has not been issued in good faith.

#### Analysis

Where a tenant disputes any notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), the landlord must also demonstrate good faith intent to accomplish the stated purpose within a reasonable time after the effective date of the Notice.

In this case, the tenant makes the claim that the landlord who attended this hearing is not a landlord, but the other landlord named in this application is his mother and the landlord. Section 1 of the *Act* defines a landlord:

**"landlord"**, in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

(c) a person, other than a tenant occupying the rental unit, who

(i) is entitled to possession of the rental unit, and

(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this.

In this case, the tenant disputes that the landlord who attended this hearing is a landlord. The Notice was issued and signed by both landlords (SA and FC) on July 14, 2022. I agree that the Title Search only indicates 1 owner.

I have reviewed all of the evidence, with the exception of evidence provided by the landlord that was not provided to the tenant, and there is no evidence from the owner that she intends in good faith to move in. Also missing is any testimony from the owner that she intends in good faith to move in. The landlord who attended this hearing gave testimony about her poor health, but that is disputed by the tenant who indicated during cross examination of the landlord that the owner climbs ladders and gardens, cleans weeds, the yard and climbs stairs to the deck of the rental unit unannounced. The landlord who attended this hearing also testified that the reason there are 2 boxes checked on the Notice indicating that the landlord and the landlord's child will be occupying the rental unit is that he will only move in if his mother requires it. Since there is no evidence from the owner that she intends to move in or that she has granted her son status as an agent for the landlord, I am not satisfied that her son has any standing as a landlord.

The landlord who attended this hearing also testified that there have been complaints from neighbours, which I find gives rise to an ulterior motive.

I am not satisfied that the landlord has established any good faith intent to use the rental unit for the owner's use or the owner's son to use.

I have also reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property provided by the tenant. The *Act* requires a landlord to give any notice to end a tenancy in the approved form. Since the tenant has only provided pages 1 and 2 of the 4-page Notice, I cannot be satisfied that any Notice given was in the approved form.

The Notice is cancelled and the tenancy continues.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in that amount in favour of the tenant as against the landlord, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by serving the order upon the landlord and filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 14, 2022 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: October 23, 2022

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Residential Tenancy Branch