



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, RR, RP, OLC, AS, FF

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice or 2 Month Notice) issued by the landlords, a reduction in monthly rent, an order for repairs, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, authorization to assign or sublease the tenancy, and recovery of the cost of the filing fee.

The tenant, the subtenant, and the landlords attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this case, I find the primary issue to be decided is consideration of the 2 Month Notice, as this determines whether the tenancy ends or continues. I find the remaining issues listed in the tenant's application are not related to the primary issue. I will, therefore, only consider the tenant's request to cancel the 2 Month Notice and to recover the cost of the filing fee. The balance of the tenant's application is severed and will be addressed within this Decision.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Is the tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

The tenant submitted that the tenancy began 8-10 years ago and that current monthly rent is \$2,230.

The tenant presently lives in the USA and has a sublease with the subtenant present at the hearing. The testimony at the hearing shows that the tenant has not lived in the rental unit since January 2021. The landlord said that the tenant remains their tenant and pays the monthly rent. The landlord denied that a tenancy formed between them and the subtenant and the tenant did not claim otherwise.

The evidence at the hearing was that the landlords served the tenant a 2 Month Notice by email. The tenant submitted on his application that he received the Notice by email on May 29, 2022. The Notice listed an effective move-out date of July 31, 2021. Filed in evidence was a copy of the Notice.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the landlord's close family member, or here, their father or mother.

In his application, the tenant wrote the following:

*I believe the landlords are acting with bad faith, they have been insisting on me moving out without ever mention their parents would need to move in, only after I refused them directly to move out then this came up. They are working closely with the building manger that has personal issues against me to harassed me and the subtenants, threatening to have police knocking on my door or get kicked out suddenly when I have never missed a payment, have upgraded the unit and never bothered any neighbou*

[Reproduced as written]

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord submitted that they issued the 2 Month Notice to the tenant so that the 90 year old mother of landlord, SL, could move into the rental unit.

The landlord said that their mother is in good mental and physical health, apart from the arthritis and knee pain affecting her mobility. The landlord said that the decision to have their mother move into the rental unit was very difficult, and required a family meeting with their mother and four children. The landlord said it was a difficult decision as their mother would have to move from her large, long-term home into the condo. The landlord said that their mother was no longer able to climb the 14 stairs into the living area. The landlord said the condo had elevators and concierge service, which would allow the landlord's mother to live independently and have a better quality of life.

The landlord said that the stress of fighting this dispute and the delay in their mother moving in has affected their mental health, along with the rest of the family. The landlord said that their mother's husband died during Covid and now lives alone.

The landlord said that the rental unit is 15 minutes away from them and their sister, and is close to another sister.

Filed in evidence by the landlord were medical records for their mother, a written statement of their position, and a photo of the 14 stairs in their mother's home.

In response, the tenant submitted that he was never told about the landlord's mother's health. The landlords began to stop communicating with him, although he was a long

time tenant and took care of the rental unit for years, such as making small repairs so the landlords would not have to do them.

The tenant questioned why the landlord's mother would want to move into a 3-bedroom condo if she has mobility issues.

The tenant also submitted that the landlords lived 2 hours away from the rental unit, so it did not make sense they would live so far from their mother.

The tenant submitted that he was currently trying to get a replacement passport while in the US and would be unable to return to pack his personal property and furnishings, as he would not be able to re-enter the US without a passport.

The landlord said they did not live 2 hours away, they live 15 minutes away. The landlord said that they have lived in their home for 35 years.

The landlord submitted that the tenant was referring to his work address being a longer distance away, but that was his office and was only 45 minutes away.

In final discussions at the hearing, the landlord said that if I upheld the Notice and granted an order of possession, the effective date could be extended to November 30, 2022.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 49 (3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or spouse intends in good faith to occupy the rental unit.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Tenancy Policy Guideline 2A (PG 2A) states that a landlord may end the tenancy if they or their close family member, landlord and spouse in this case, *“intend in good faith to use the rental unit as a living accommodation or as part of their living space”*.

PG 2A further provides that 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 motive for ending the tenancy, and they are not trying to avoid their obligations under the Act.

In considering the totality of the evidence, I am satisfied that the landlords truly intend to use the premises for the stated purpose and that the landlords did not have an ulterior motive for ending the tenancy. I make these finding based on the following.

After hearing from the landlord, I find that the landlord's mother genuinely intends to move into the rental unit for occupational purposes. I make this determination based upon the medical records provided and find it reasonable to conclude that the landlord's 90-year old mother has mobility issues making it difficult to go up and down the stairs inside her current home. The rental unit is accessible by elevators, with a concierge service, and is smaller than the mother's current home from the evidence heard at the hearing.

I also find the landlord submitted sufficient evidence to show that the rental unit is also closer to the landlords and the mother's other daughters, and taken in totality, I find the landlord submitted sufficient evidence that the landlord's mother's quality of life would improve with the move.

I cannot find that the landlord acted dishonestly or had an ulterior motive in issuing the Notice seeking the end of the tenancy.

I therefore find that, upon a balance of probabilities, the landlords have met their burden of proving that they honestly intend to move their mother into the rental unit for occupational purposes and that the Notice was issued in good faith.

I find the Notice is valid and enforceable.

As such, I uphold the 2 Month Notice and I **dismiss** the tenant's application seeking cancellation of the Notice and recovery of the filing fee, without leave to reapply.

I find that the landlords are entitled to, and I **grant** an order of possession for the rental unit effective at **1:00 pm on November 30, 2022**, as agreed at the hearing, pursuant to section 55(1)(b) of the Act.

Should the tenant fail to vacate the rental unit by 1:00 p.m., November 30, 2022, the order must be served to the tenant and may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenant.

As the tenancy is ending, I also dismiss, without leave to reapply, the remaining issues listed on the tenant's application, as these issues are related to an ongoing tenancy. I specifically note that although the tenant requested to reduce the monthly rent, the tenant sought a lump sum amount, rather than list the amount of reduction in the monthly rent he sought. The tenant wrote this was an aggregated amount. I therefore find the tenant's monetary claim of \$2,100 is unsupported by the evidence as it did not list a monthly reduction.

The landlords and the tenant are reminded of the provisions of section 51(1) of the Act, which stipulates that a tenant who receives a notice to end a tenancy pursuant to section 49 of the Act is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

### Conclusion

The tenant's application is dismissed in full, without leave to reapply, as I have upheld the 2 Month Notice.

The landlords have been issued an order of possession for the rental unit, effective at 1:00 p.m. on November 30, 2022.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 27, 2022