



# 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 tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlords Use of Property (the 2 Month Notice) pursuant to section 49.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

DS gave the following testimony. The tenancy began on or about November 1, 2019. Rent in the amount of \$1600.00 is payable in advance on the first day of each month. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on June 21, 2022 with an effective date of August 31, 2022 for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse...*

DS testified the notice was issued so that his daughter can move in. DS testified that his daughter suffers from severe scoliosis, depression, and suicidal tendencies.

DS testified his wife issued a letter to the tenant in April 2022 advising that they wish to end the tenancy on August 31, 2022. The letter stated that their niece was going to be living with them. HV testified that her niece also suffers from a medical condition and wanted her to spend time with her daughter while her daughter recovers from back surgery. HV and DS both testified that their daughter is going to have major surgery to address her scoliosis and are concerned about her depression and suicidal tendencies while she convalesces. DS testified that her daughter is ashamed and embarrassed about her condition and did not want to disclose the true reason to the tenants as to why they wanted the rental unit.

DS testified that they received a letter from the tenants advocate advising that they issued an improper notice to end tenancy and for the wrong reason. SW and HV realized that they had to provide complete information about their daughter and then issued the notice advising that their daughter is going to move in and have their niece assist in her recovery from major back surgery. DS testified that it wasn't false information that was submitted to the tenant, but incomplete information due to privacy concerns. DS also has concerns about his daughter's recovery if she must climb steps which is another reason, they wish to take back the basement unit.

HV testified that her daughter shared the details of her suicide at her school and provided two different ways she intended to kill herself. HV testified that she is fearful

that if her daughter and her niece are unable to move into the basement, her daughter will follow through with her plans. The landlords request an order of possession.

KM testified that her and her family suffer from medical conditions. KM testified that she has been on the waiting list for BC Housing for 7 years and have still not obtained a spot. KM testified that she is under a lot of stress and is very worried about where she is going to live. KM testified that if she is given some time she will attempt to get her own housing.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

*Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.*

*A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:*

*a Notice to End Tenancy at another rental unit;*

*an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or*

*a local government document allowing a change to the rental unit(e.g., building permit) and a contract for the work.*

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

The landlords gave clear concise and credible testimony. DS and HV provided the logistical and safety reasons as to why they want their daughter to live in the home and have their niece there to provide support and companionship. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. The Notice meets the criteria for form and content as per section 52 of the Act. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act.

The Notice remains in full effect and force. The tenancy is terminated.

#### Conclusion

The tenancy is terminated. The landlord is granted an order of possession.

The tenants application is dismissed in its entirety 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: November 10, 2022

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Residential Tenancy Branch