



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, ("2 Month Notice"), pursuant to section 49;
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

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 landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession for landlords' use of property?

Are the tenants entitled to recover the filing fee paid for this application?

### Background and Evidence

The landlords advocate and the tenant agreed to the following facts. This tenancy began on August 15, 2016. Monthly rent in the current amount of \$3300.00 is payable on the first day of each month. A security deposit of \$1,750.00 was paid by the tenants and the landlords continue to retain this deposit in full. The tenants continue to reside in the rental unit.

The tenant confirmed that the tenants seek to cancel the landlords' 2 Month Notice. The landlord confirmed that the landlords dispute the tenants' application and seek an order of possession against the tenants.

A copy of the landlords' 2 Month Notice dated June 27, 2022 was provided for this hearing. Both parties agreed that the effective move-out date on the notice is August 31, 2022, indicating the following reason for seeking an end to this tenancy:

- *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).*
- *Please indicate which family member will occupy the unit.*
  - *The child of the landlord or landlord's spouse.*

The landlords advocate made the following submissions. The advocate submits that the landlords 40-year-old daughter wants to live in the home and use the separate structure ("the shop") to run her business. The advocate submits that the landlord's daughter has a clothing boutique at a local mall, but her lease has expired and that she has been granted an extension until June 30, 2023 but wants to set up her business in the shop as soon as possible. The advocate submits that the landlord and his daughter are fully aware of the penalty for giving a false statement regarding the use of the property and that there could be financial consequences if it is not used for the intended purpose as noted on the notice.

GH testified that the landlord has not issued the notice in good faith. GH testified that the landlord purchased the home in August 2021 and the first interaction they had with the landlord was that the landlord wanted to take the shop. GH testified that the landlord is not interested in the house but is interested in the shop. GH testified that the issue has always been about the shop. GH testified that the landlord made attempts to seek a change in the tenancy agreement and provided two separate offers, a higher rental rate for the home alone or an even higher rental rate for the home and the shop. GH testified that the whole property including the shop is part of their tenancy agreement and always has been. GH testified that the tenants wish to remain, and that the landlord has not provided enough proof that they will be using the home for their daughter's primary residence.

### Analysis

#### Burden of Proof

As noted below, the landlords have the burden of proof, on a balance of probabilities, to prove the reason for issuing the 2 Month Notice to the tenants. The *Act*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlords to provide evidence of the reason on the 2 Month Notice.

#### Findings

Subsection 49(3) of the *Act* sets out that landlords may end a tenancy in respect of a rental unit if the landlords or a close family member intends, in good faith, to occupy the rental unit.

According to subsection 49(8) of the *Act*, tenants may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenants received the notice. The tenants claimed that they received the 2 Month Notice on June 27, 2022 and filed their application to dispute it on the July 7, 2022. The tenants' application is within the 15-day time limit under the *Act*. The onus shifts to the landlords to justify the basis of the 2 Month Notice.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, states the following, in part, in section "B. Good Faith:"

*In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*

*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 obligations under the RTA and MHPTA 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 (s.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 suggest 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.*

I find that the landlords had ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons explained below.

The tenant provide documentation that when the landlord took possession of the unit, they were making attempts to take possession of the shop. The advocate stated that the landlord's daughters lease expired and was extended, however, they did not provide any documentation to support that. In addition, the landlord or their daughter did not participate in this hearing to provide firsthand information and testimony as to their intentions.

As noted above, it is the landlords' burden of proof to show that the landlord's daughter intends to move into the rental unit in good faith, as this was reason, they said they issued the 2 Month Notice to the tenants.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their burden of proof to show that their daughter intends to move into the rental unit in good faith based on the insufficient evidence before me.

Accordingly, the tenants' application to cancel the landlords' 2 Month Notice is granted. The landlords' 2 Month Notice, dated June 27, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlords are not entitled to an order of possession for landlords' use of property.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlords.

### Conclusion

The tenants' application to cancel the landlords' 2 Month Notice is granted. The landlords' 2 Month Notice, dated June 27, 2022, is cancelled and of no force or effect.

I order the tenants to reduce \$100.00 on a one-time basis only, from their future rent payable to the landlords for this tenancy, in full satisfaction of the monetary award for the 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: November 28, 2022

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Residential Tenancy Branch