



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, 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 landlord, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the cost of the filing fee.

The tenant and the landlord 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 landlord confirmed receipt of the tenant's evidence and application on July 26, 2022. The landlord did not file 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-

The tenant's request for an order for the landlord's compliance related to not only receiving an improper RTB form, but also requesting a proper, 24-hour written notice to enter the property.

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 tenant's request for an order requiring the landlord to comply is 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 **dismissed**, with leave to re-apply.

Leave to reapply is not an extension of any applicable time limit.

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 tenancy began on or about November 15, 2015, and monthly rent is currently \$1,368 plus utilities.

The evidence shows that the landlord issued the tenant a 2 Month Notice. The Notice was dated June 29, 2022. The tenant submitted in their application that they received the 2 Month Notice on July 7, 2022, by pre-agreed email.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the landlord or landlord's spouse.

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

The landlord testified that he and his brother inherited the residential property from his mother, the original landlord. The landlord said that in September 2021, he had a stroke, was rushed to the hospital and subsequently lost some vision and then his driver's licence. Although his vision has been restored and driver's licence reinstated, the landlord said he wants to retire.

Currently he owns a 4-plex rental property he lives in, but wants to retire to this rental unit, as his doctor advised him he could not drive in rush hour traffic.

Tenant's response –

In his application, the tenant wrote the following:

*The landlord told us by email and text on June 29<sup>th</sup>, 2022 that he wanted us out by Sept. 1<sup>st</sup>, 2022 so he could sell and paint the townhouse. An hour later he sent us a two month eviction notice-RTB-32-that he wanted to occupy the property. This notice appears to be disingenuous as the owners expressed their desire to sell. (\*former landlord agent name\*) ceased to manage unit #25 on Feb. 1, 2022 after six and half years. Owners decided to manage property but we received no contract from them. No #RTB-51 form was received by us from landlord on how to communicate. Also, eviction notice was not signed by landlord. We tried to negotiate in good faith a proper 4 month notice but this was rejected.*

[Reproduced as written except for anonymizing  
personal information to protect privacy]

In addition to the written statement, the tenant testified that the landlord's sister-in-law, who is a realtor, called and asked him if he received her email, as she had requested to do an assessment on the rental unit. The landlord inquired of the tenant if they had an interest in purchasing the rental unit. The tenant testified that they then began to receive emails. Filed in evidence was an email of March 26, 2022, from the landlord's brother asking the tenant if he was "interested". This was in an email dated March 26, 2022 and titled, "Selling the townhouse".

The tenant testified on June 29, 2022, he received an email from the landlord informing the tenant he was going to sell the townhouse, asked the tenant if he could be out in two months and said he was going to paint the rental unit. Filed in evidence was the email.

The tenant testified that an hour later, he received the 2 Month Notice by email.

The tenant also sent in other copies of emails, one dated March 13, 2022, from the landlord's brother to the tenant, stating that he and his brother were thinking of selling the town house, which would not be completed until the summer.

### 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.

PG 2A addresses good faith as follows:

### 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.

...

If there are comparable 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 considering the totality of the evidence, I am not satisfied that the landlord truly intends to use the premises for the stated purpose or that the landlord did not have an ulterior motive for ending the tenancy. I make these finding based on the following.

The evidence is the landlord and his brother began at least by March 2022, telling the tenant that they intended on selling the rental unit by the summer. On June 29, 2022, the landlord asked the tenant to vacate in two months as they intended on painting the rental unit to sell it. That same day, the landlord emailed and served the tenant a 2 Month Notice giving the tenant 2 months to vacate. Despite the landlord and his brother telling the tenant they were going to sell the rental unit, the landlord put as reason he would occupy the rental unit.

I find the evidence is overwhelming that the landlord had an ulterior motive when issuing the 2 Month Notice, and that motive was to sell the rental unit rather than occupy the rental unit. For this reason, I **find** the landlord did not issue the 2 Month Notice in good faith.

Given the compelling evidence before me and taken in totality, I find that the landlord submitted insufficient evidence to prove on a balance of probabilities that the landlord intended on living in the rental unit for residential purposes for 6 months following the effective date. I also find that the 2 Month Notice was not issued in good faith, but rather I find the landlords had an ulterior motive to sell the rental unit.

Therefore, I find the tenant's application is successful, and as result, I **ORDER** the 2 Month Notice dated June 29, 2022, for an effective move-out date of September 1, 2022, is **cancelled** and is of no force or effect.

I **ORDER** the tenancy to continue until it may legally end under the Act.

I grant the tenant recovery of his filing fee of \$100. I authorize the tenant a one-time rent reduction of \$100 from a future monthly rent payment in full satisfaction.

Information for the landlord –

While I have not made any determination on the tenant's request for an order requiring the landlord to comply with the Act, I remind the landlord that he is required to follow the stipulations in section 29 of the Act when entering the rental unit. For clarity, I have not found that the landlord has violated the Act.

### Conclusion

The tenant's application has been granted as I have ordered the 2 Month Notice cancelled and is of no force or effect. The tenancy will continue until ended in accordance with the Act.

The tenant is granted a 1-time rent reduction of \$100 to recover the cost of 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*. 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: December 07, 2022

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Residential Tenancy Branch