



# 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 Landlord's Use of Property ("2 Month Notice"), pursuant to section 49.

The landlord attended with their son, AM, while the tenant attended with their advocate, LZ. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice dated September 23, 2023, which was posted on the tenant's door on September 23, 2022. I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

**Issues(s) 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**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on January 1, 2010, with monthly rent currently set at \$1,300.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$600.00, which they still hold.

The landlord issued the 2 Month Notice dated September 23, 2023, with an effective move-out date of November 30, 2022 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord provided the following background for why they had decided to issue the 2 Month Notice. The landlord's son, AM, attended the hearing, and testified that they plan on moving into the basement suite in order to assist their aging parents. AM testified that their health is deteriorating, and they currently have to drive to the house several times a week to assist their parents with daily errands and provide them with support. As AM resides in a different city, the proximity is important to the family.

AM provided a written statement, as well as a letter from a family friend, as well as the family doctor verifying that the landlord has health problems, and requires assistance with their daily activities. AM testified that the landlord does not drive, and relies on AM to drive them to appointments and errands. AM testified that the growing demands as the landlord's health deteriorates has grown to the extent that they cannot wait any longer.

The tenant testified that they had received the 2 Month Notice shortly after their wife had passed away. The tenant testified that they were extremely depressed, and questioned why the family required the tenant's suite when there was ample space on the main floor. The tenant suspects that the family wants to re-rent the suite for more

rent, and testified that AM's father had commented how the suite was too big for the tenant.

The tenant's advocate questioned why AM has not provided specific information about their current living arrangements, or evidence to support any preparations made for the move.

AM responded that they require their own personal space for them and their partner. AM also responded that they cannot make any arrangements such as change of address until after they have moved. AM stated that their father was not present to confirm any statements they had made, and argued that their father was quiet and was not one to approach the tenant. AM questioned what evidence the tenant had to support the referenced conversation and comment.

### **Analysis**

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

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"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 that they do not have an ulterior motive for ending the tenancy."*

As the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

In consideration of the evidence and testimony before me, I find the landlord has met the burden of proof to support that they are suffering from deteriorating health and require regular assistance with their daily activities and errands. I accept AM's testimony that they currently reside in a different city, and moving into the basement suite would allow AM the proximity to better assist their aging parents, while still providing AM with the personal space and privacy they need.

Although I am sympathetic towards the tenant, especially in light of their significant loss, I find the landlord has provided sufficient evidence to support that they had issued the 2 Month Notice in good faith. Although the tenant believes that the landlord has ulterior motives I do not find the tenant's belief to be supported in evidence.

I find that the landlord has met their burden of proof to show that they do not have any other purpose in ending this tenancy, and that they truly require the tenant the rental unit in order for the landlord's son to move in, and better assist the aging landlord and family. Accordingly, I dismiss the tenant's application to cancel the 2 Month Notice.

I find that the 2 Month Notice complies with section 52 of the *Act*, which requires that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form. I note that the 2 Month Notice does contain a typographical error where the 2 Month Notice was dated 2023 instead of 2022. I have considered whether this error would cause the 2 Month Notice to be invalid. I find that this typographical error is an obvious error, and does not create any ambiguity or confusion as to what the actual date should be. The tenant does not dispute being served with the 2 Month Notice on September 23, 2022, and the effective date is clearly dated November 30, 2022. I find that that despite the error, the 2 Month Notice still complies with section 52 of the *Act*. I find the 2 Month Notice to still be valid despite this error.

Section 55(1) of the *Act* reads as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

### **Conclusion**

I dismiss the tenant's application without leave to reapply. I find that the landlord's 2 Month Notice to be valid and effective as of November 30, 2022.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 12, 2022

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Residential Tenancy Branch