



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** CNC, CNL, LRE, OLC, FFT (Tenant)  
OPL, FFL (Landlord)

### Introduction

This hearing was convened in response to cross applications pursuant to the *Residential Tenancy Act* (the “Act”) for:

Landlord:

- an order of possession pursuant to section 55;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Tenant:

- cancellation of the One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47;
- cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “**Notice**”) pursuant to section 49;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlords’ right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The Tenant attended the hearing. The Landlord (KS) was represented at the hearing by her Agent [the “Landlord’s Agent”]. The Landlord submitted documentation providing proof the Landlord’s Agent had the authority to act on the Landlord’s behalf. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant testified, and the Landlord confirmed, that the Tenant served the Landlord with the Notice of Dispute Resolution [NDR] form. The Tenant testified that he did not submit any evidence to the RTB and therefore had no evidence to serve the Landlord. The Landlord testified, and the Tenant confirmed, that the Landlord served the Tenant with their NDR and evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* (the “Rules”) does not permit recordings of any RTB hearings by any party. At the outset of both hearing the Landlord’s Agent and the Tenant both separately affirmed, under oath, they would not record the hearings.

### **Preliminary Issue #1: Withdrawal of One Month Notice to End Tenancy for Cause**

The Landlord’s Agent testified at the start of the hearing that the Landlord withdraws the One Month

Notice to End Tenancy for Cause dated June 27, 2022. The Landlord's family circumstances have significantly changed, and she requires possession of the rental unit; therefore, she issued the Two Month Notice for Landlord's Use. I cancel the June 27, 2022 One Month Notice. It is of no force and effect.

**Preliminary Issue #2: Severing**

In his Application the Tenant sought various remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure [the "Rules"] states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure that we are able to address disputes in a timely and efficient manner.

In this circumstance, the most urgent of the matters is whether the tenancy will continue or end pursuant to the two notices to end tenancy that are subject to the application. As the One Month Notice has been withdrawn and is of no force and effect, I will only consider the Tenant's request to cancel the Two Month Notice and the Landlord's Application for an order of possession of the rental unit. Some of the additional relief is only relevant to the extent that the tenancy continues.

Accordingly pursuant to Rule 2.3, I dismiss the Tenant's following claims:

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70;

**Preliminary Issue #3: Tenant's request to telephone a witness at 10:22 a.m.**

At the start of the hearing, the parties were asked if there were any other parties present for the hearing or as witnesses. The Landlord's Agent stated he was presenting all evidence on behalf of the Landlord. The Tenant confirmed that he was presenting all evidence on his behalf.

At 10:22 a.m., the Tenant stated he wanted to call a witness. The witness was not present and needed to be contacted by phone and then dial in. I asked the Tenant what the nature of the evidence was and how it related to the Two Month Notice? The Tenant stated that it involved an altercation between the Landlord's husband RS and the husband of the Tenant's sister-in-law at the beginning of 2022 and involved the police. Again, I asked the Tenant to explain how the witness testimony was relevant to the Two Month Notice and he was unable to do so.

Pursuant to Rule 3.6 of the Rules, evidence must be relevant to the claims being made in the application. As the Tenant was unable to explain the relevance of the witness testimony, I denied the Tenant's request.

**Preliminary Issue #4: Family Corporation identified on the Two Month Notice**

Section 49(4) states a Landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The *Act* defines a family corporation as a corporation in which all the voting shares are owned by one individual or one individual plus one or more of that individuals' brother, sister, or close family members.

On the Two Month Notice, the Landlord identified two reasons for ending 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 close family member will occupy the unit.

- The landlord or the landlord's spouse.

The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Landlord's Agent confirmed that the Landlord mistakenly ticked the family corporation box as well as the box indicating the unit will be occupied by the Landlord or Landlord's spouse. The Landlord's Agent confirmed the first reason identified on the Two Month Notice is the correct reason.

Pursuant to the *Act* s. 68(2)(b) I amend the Two Month Notice to exclude the second reason to end tenancy.

#### **Preliminary Issue #5: Settlement**

The Landlord's Agent stated that the Landlord was open to negotiating a settlement. A brief negotiation took place, but the parties were unable to agree. The hearing proceeded as an arbitration.

#### **Issues to be Decided**

Is the Landlord entitled to:

- 1) an order of possession of the rental unit per the Two-Month Notice; and
- 2) recover the filing fee;

Is the Tenant entitled to:

- 1) an order cancelling the Two Month Notice;
- 2) recover the filing fee?

#### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The Tenancy Agreement was not submitted into evidence by either party. The Tenant testified he did not upload the tenancy agreement because he thought it was no longer in effect since the one-year fixed term had expired.

The Tenant testified and the Landlord's Agent confirmed the parties entered into a written fixed term tenancy agreement starting January 1, 2019 and ending December 31, 2019. The tenancy converted to a periodic month to month tenancy thereafter. Current monthly rent is \$1400.00, payable on the first of each month. The Tenant paid the Landlord a security deposit of \$600.00. The Landlord still retains this deposit.

The rental unit is a two(2) bedroom basement unit. The Landlord and her family live in the upper unit. The Tenancy Agreement identified two (2) tenants, RKG and PS. PS moved out of the rental unit at the beginning of 2020. Since PS moved, the Tenant has shared the rental unit with other occupants including two family friends. The Landlord increased the rent to \$1600.00 per month based on the additional occupants.

Currently the Tenant's sister-in-law and her 18-month-old child are living in the rental unit with the Tenant, and the Landlord increased the rent by \$200.00 for the additional occupants and added the cost of utilities, which are paid in cash. When the Tenant's mother stayed for a couple months to help out with childcare the Landlord similarly increased the rent by \$200.00 (temporarily) and denied the Tenant access to the laundry, which was initially included in the rent. The Tenant denies that the additional occupants were unauthorized stating they were sanctioned by the Landlord for an increased fee. The Tenant submitted no rent receipts to corroborate his testimony.

The Tenant states that there are several reasons he cannot move at this time. The child is only 18 months, and it will be too hard on the toddler to change locations. Further, the child is in pre-school at a nearby facility. Additionally, the grocery store is close for his sister-in-law to shop for groceries.

The Tenant also stated that his sister-in-law suffers from depression, and the depression was exacerbated by the death of her father last weekend. All in all, it has been a hard time for the family.

The Tenant provided that COVID had an impact on him stating "it was a hard time for everyone". Now rents have increased, "the market is hot" and this rental unit is rented at lower rent. He questions if the Landlord issued the notice in good faith or if the Landlord has an ulterior motive to evict.

The Tenant also stated that the Landlord continued to accept rent and did not provide a receipt for "use and occupancy". He therefore argues the tenancy should continue.

The Tenant also stated the landlord/tenant relationship has been contentious for some time and the Landlord gets annoyed when the Tenant's brother, his sister-in-law's husband, comes to visit from the United States. The Landlord called the police reporting that the Tenant's brother was in Canada illegally, which was untrue. In January 2022 another police incident occurred when the Landlord banged on the door of the rental unit, barged in, and pushed the Tenant's brother. The Tenant did not upload into evidence the police reports.

The Landlord's Agent testified that the Two-Month Notice was issued as a result of the Landlord's husband RS's deteriorating mental and physical health which "are progressive in nature" and "worsening". The Landlord's Agent submitted a note from RS's General Practitioner, which reads:

My Patient RS, is a person with a disability who requires proper care and assistance. He has ADHD, Which his worsening. He also suffers from depression, psychosis, insomnia, diabetes insulin dependent, asthma, anxiety, and a neurodegenerative disease. All his medical conditions are progressive in nature and getting worse. Living in a single confined area is very stressed and safety hazard for his health and leads to him being claustrophobic and relapsing back into a depressive and psychotic state. This has prolonged since his battle with covid-19 as there was not enough care for the family to provide adequate care for R. This has led to the patient being limited in his activities (including treatment) of daily living. Due to lack of space, he has been unable to try changes in his living environment such as exercise, hobbies, improving hygiene and further treatments. It is under my recommendation that R needs

additional space in his family's house, in order to do the aforementioned activities and treatment to thrive in daily living. [reproduced as written]

The Landlord's Agent also submitted two (2) *Affidavits* from Landlord KS and her husband RS supporting the plans that RS will occupy the unit.

Landlord KS, in her sworn *Affidavit*, in part states:

He [RS] presently sleeps in the garage at times to find the quiet he needs to rest. We need a space for his health and safety needs so that he can be alone and it must be close to our family. We intend to have R live in this suite for the foreseeable future (well in excess of 6 months) and are not gaining possession of the suite for any other reasons.

RS, in his sworn *Affidavit*, states in part:

My family also suffers when I'm triggered, and they must avoid their daily lives to give me the absolute quiet I need. I do need a space for all my family's health and safety needs.

The Landlord's Agent stated that the Commissioner for Oaths cautioned the Landlord and her husband that *Affidavits* were sworn statements and the contents must be true. The Landlord's Agent concluded by stating that RS needed the rental unit for his personal needs and also to support the Landlord's family and marriage.

### **Analysis**

The Act s. 49(3) provides that a Landlord may end a tenancy by giving a Two Month Notice "if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit".

The Act s.55 provides that I must grant to the Landlord an order of possession if the Two Month Notice complies with the Act s. 52 form and content requirements, and I dismiss the Tenant's Application or uphold the Landlord's notice.

The Tenant questioned whether the Landlord had an ulterior motive viz., to re-rent at current market value. The Tenant objected to moving because of family circumstances, namely, that the location was convenient for his sister-in-law and her toddler. The Tenant did not contest the medical information, or the *Affidavits* submitted into evidence by the Landlord.

*Residential Tenancy Policy Guideline 2A* examines the issue of ending a tenancy for landlord's use of property.

The Guideline notes that *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 Tenancy.

This Guideline reads in part as follows:

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 demonstrates they do not have an ulterior motive for ending the tenancy.

.....

When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith.

.....

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 *[Act]* or the tenancy agreement.

.....

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 ulterior motive.

Both parties were aware that the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient.

The Tenant argued that the Landlord has an ulterior motive for ending the tenancy namely increasing rent and by continuing to accept rent without noting the money was for “use and occupancy” indicated the continence of the tenancy.

I will deal with the second issue argued by the Tenant first, that the Landlord continued to accept rent payments after the effective date on the Notice without issuing a receipt for ‘use and occupancy’. When rent payments have been made by Tenants and accepted by Landlord **after the effective date of the 10 Day Notice** (for unpaid rent) the Landlord should issue receipts for “use and occupancy” only so as to not reinstate the tenancy and to avoid confusion. In this case, the Notice issued was a Two Month Notice and the “use and occupancy” recommendation does not apply.

With regard to the Tenant’s argument the Landlord had an ulterior motive for issuing the Two Month Notice, specifically to rent to new Tenants at a higher monthly rent, I do note the Landlord issued a One Month Notice for Cause prior to issuing the Two Month Notice. The reasons cited on the One Month Notice for Cause indicate a problematic landlord/tenant relationship. The Landlord alleged several ongoing concerns that culminated in the issuance of the One Month Notice. I also noted the Landlord withdrew the One Month Notice focusing on the Two Month Notice; although the Landlord could have pursued obtaining a decision for both Notices. The Landlord’s Agent explained that due to RS’s deteriorating medical issues the only concern the Landlord had was securing the rental unit for her husband. I find the Tenant only provided allegations

that the Landlord had an ulterior motive to re-rent the basement unit at a higher rent unsupported by substantial evidence.

The Landlord's Agent submitted complete, well prepared, and concise materials supporting the Landlord's claim that RS intends to occupy the unit. While the letter from the GP is not a medico-legal letter, the medical letter provides diagnoses, prognoses, and treatment recommendations based on the attending physician's medical expertise and knowledge of his patient.

The Landlord and her husband submitted *Affidavits* affirming RS's intention to occupy the rental unit along with details of the multiple health challenges RS is facing. The Landlord and her husband are aware of the consequences imposed by the Act where a Landlord does not accomplish the stated purpose within a reasonable time or use the unit for that purpose for at least six months and stated so in the *Affidavits*. That is s. 51(2) of the Act, where a Landlord must pay compensation equal to 12 times the amount of rent, where they do not accomplish that stated intent. This does not carry my finding on this point exclusively; however, I find it relevant acknowledgement by the Landlord that they are aware of the seriousness of ending a tenancy on a false pretext.

I accept the Landlord's evidence in all aspects. I find the Landlord's evidence shows honest intention, the absence of malice, and no ulterior motive to defraud or seek an unconscionable advantage. I accept the Landlord's husband RS will reside in the rental unit as per the recommendations of the family physician.

As noted above in Guideline 2A, "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". I find that the Landlord has met the burden of proof on a balance of probabilities that the Two Month Notice was issued for a valid reason. As per the Act s. 49(3), I find they or their close family member intends in good faith to occupy the rental unit.

For the reasons above, I uphold the Two-Month Notice issued on September 27, 2022 and dismiss the Tenant's Application to cancel the Two Month Notice and for reimbursement of the filing fee.

The Act s.55 provides that I must grant to the Landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the Tenant's Application or uphold the Two-Month Notice. I have dismissed the Tenant's Application and I find the Notice complies with s. 52 therefore the Landlord is entitled to an order of possession. Consequently, the Landlord's Application was not required and the Landlord's application to recover the filing fee is dismissed.

The Landlord's Agent stated the Landlord was willing to extend the effective date allowing the Tenant to remain in the rental unit until January 31, 2023 providing an opportunity for the Tenant and occupants to find/make new living arrangements. I therefore find that the Order of Possession is effective January 31, 2023, after service on the tenant. This effectively provided four months' notice to the Tenant.

Since the Tenant will be vacating the rental unit, the additional relief sought by the Tenant is moot. I, therefore, dismiss the Tenant's application in its entirety.

The Tenant is entitled to compensation in the amount of one month's rent. The Landlord must pay the Tenant this compensation on or before the effective date of January 31, 2023. The Tenant may apply the compensation to the last month's rent. I leave this matter to the Landlord and Tenant to decide.

**Conclusion**

I cancel the One Month Notice for Cause issued June 27, 2022. The Notice is without force and effect.

I dismiss the Tenant's Application to Cancel the Two Month Notice, without leave to reapply. I dismiss the Tenant's Application for the additional remedies requested, without leave to reapply.

I uphold the Two Month Notice issued by the Landlord and dismiss the Landlord's request for reimbursement of the filing fee.

Pursuant to the *Act* s. 55, I grant the Landlord an Order of Possession effective January 31, 2023, at which time the Tenant and occupants must provide vacant possession to the Landlord. Should the Tenant fail to comply with this Order this Order may be filed and enforced as an Order of the Court of British Columbia. The Tenant is cautioned that should he not comply with the Order and vacate the rental unit on the effective date, the costs of enforcement are recoverable from the Tenant.

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 17, 2022

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Residential Tenancy Branch