



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL OLC FFT**

### Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) made by the Tenant under the *Residential Tenancy Act* (the “Act”) in which the Tenant seeks:

- an order to cancel a Notice to End Tenancy for Landlord’s Use of Property dated July 29, 2022 (“2 Month Notice”) pursuant to section 49;
- an order that the Landlord comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application pursuant to section 72.

The Landlord and the Tenant attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Residential Tenancy Branch Rules of Procedure (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated the Notice of Dispute Resolution Proceeding and his evidence (collectively the “NDRP Package”) was served on the Landlord by registered mail on August 21, 2022. The Tenant provided the Canada Post tracking number for service of the NDRP Package on the Landlord. The Landlord acknowledged receipt of the NDRP Package. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

The Landlord stated he served his evidence on the Tenant by email on December 8, 2022. The Landlord did not produce any evidence that the Tenant had consented in writing to service of documents pursuant to section 88 of the Act by email. However, the Tenant acknowledged he received the Landlord’s evidence. As such, I find the

Landlord's evidence was sufficiently served on the Tenant pursuant to section 71(2)(b) of the Act.

### Preliminary Matter – Severance and Dismissal of Tenant's Claim

At the outset of the hearing, I observed the Application included a claim for an order that the Landlord comply with the Act, Regulations and/or tenancy agreement.

Rule 2.3 of the Rules states:

#### **2.3 Related issues**

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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch ("RTB") are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

This hearing was scheduled for one hour. At the outset of the hearing, I advised the parties the primary issue in the Tenants' Application was whether the tenancy would continue or end based on the 2 Month Notice and whether the Tenant was entitled to recover the filing fee for the Application from the Landlord. Accordingly, I find the Tenant's claim for an order that the Landlord comply with the Act, Regulations and/or tenancy agreement was not sufficiently related to the primary issue of whether the 2 Month Notice would be cancelled. Based on the above, I will dismiss the Tenant's claim for an order that the Landlord comply with the Act, Regulations and/or tenancy agreement, with or without leave, depending upon whether I cancel the 2 Month Notice.

### Issues to be Decided

- Is the Tenant entitled to cancellation of the 2 Month Notice?
- Is the Tenant entitled to recover the filing fee for the Application from the Landlord?
- If the Tenant is not entitled to cancellation of the 2 Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony, only the details of the respective submissions and/or arguments of the parties relevant to the issues and findings in this matter are reproduced here. The relevant aspects of the claims made in the Application and my findings are set out below.

The Tenant submitted into evidence a copy of a tenancy agreement (“Tenancy Agreement”) dated July 9, 2022. The Tenancy Agreement states the tenancy commenced on August 1, 2021, with a fixed term ending July 31, 2022, with rent of \$1,200.00 payable on the 1<sup>st</sup> day of each month. The Tenant was required to pay a security deposit of \$600.00 by July 9, 2021. The Landlord acknowledged the Tenant paid the security deposit and that he was holding it in trust for the Tenant. Based on the above, I find there is a tenancy between the parties and that I have jurisdiction to hear the Application.

The Tenant submitted into evidence a copy of the 2 Month Notice. The Landlord stated he served the 2 Month Notice on the Tenant by email on July 29, 2022. As noted above, the Landlord did not produce any evidence that the Tenant had consented in writing to service of documents pursuant to section 88 of the Act by email. However, the Tenant acknowledged he received the 2 Month Notice. As such, I find the 2 Month Notice was sufficiently served on the Tenant pursuant to section 71(2)(b) of the Act.

The 2 Month Notice stated the reason for ending the tenancy was the rental unit will be occupied by the landlord or the landlord’s spouse. The Landlord stated the Tenancy Agreement provided the tenancy was for a fixed term of one year ending July 31, 2022. The Landlord stated he performed research to determine market rent of similar rental units. The Landlord stated the rent for two-bedroom units could be \$2,200.00 and for one-bedroom units could be \$1,800.00. The Landlord stated he met with the Tenant several times in July 2022 to negotiate a new tenancy agreement. The Landlord stated he had many parties and relatives who were interested in the rental unit. The Landlord stated he intended to use the rental unit for six months and then re-rent it.

The Tenant stated he met with the Landlord on July 7 and July 14, 2022. The Tenant stated the Landlord was offering to enter into a new tenancy with him for \$1,800.00 per month, being \$600.00 more than he was currently paying the Landlord. The Tenant stated that, at the second meeting, he attempted to show the Landlord the information

from the Residential Tenancy Branch regarding the maximum rent increase a landlord may impose pursuant to the provisions of the Act but the Landlord was not interested.

The Landlord stated he needed the rental unit back so he could use it for a home theater and a gym.

### Analysis

Sections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1)(a) In this section:

[...]

"landlord" means

- (a) for the purposes of subsection (3), an individual who
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
  - (ii) holds not less than 1/2 of the full reversionary interest, and

[...]

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
  - (i) not earlier than 2 months after the date the tenant receives the notice,
  - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
  - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

- (3) A landlord who is an individual 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.*
- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (8) A tenant may dispute
  - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
  - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

[emphasis in italics added]

The Landlord stated the 2 Month Notice was served on the Tenant by email on July 29, 2022. Pursuant to section 44 of the Regulations, the Tenant was deemed to have received the 2 Month Notice on August 1, 2022, being 3 days after it was emailed to the Tenant. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or August 16, 2022. The records of the RTB disclose the Tenant filed his application for dispute resolution to dispute the 2 Month Notice on August 3, 2022. I find the Tenant made his application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

*Residential Tenancy Policy Guideline# 2A* ("PG 2A") addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason 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: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

*"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."*

The Landlord stated the Tenancy Agreement provided the tenancy was for a fixed term of one year ending July 31, 2022. The Landlord stated he performed research to determine market the rent of similar rental units. The Landlord stated the rent for two-bedroom units could be \$2,200.00 and for one-bedroom units could be \$1,800.00. The Landlord stated he had several meetings with the Tenant in July 2022 to negotiate a new tenancy agreement.

The Tenant stated he met with the Landlord on July 7 and July 14, 2022. The Tenant stated the Landlord was offering to enter into a new tenancy with him for \$1,800.00 per month, being \$600.00 more than he was currently paying the Landlord. The Landlord disputed the Tenant's claim that he attempted to increase the rent by \$600.00 per month. However, the Landlord admitted he performed market research that indicated the market rent for a one bed-room unit was \$1,800.00. I prefer the Tenant's testimony and find the Landlord attempted to raise the Tenant's rent by \$600.00 per month. The Landlord served the Tenant with the 2 Month Notice several weeks after the Tenant refused to enter into a new tenancy agreement.

As stated in *Gichuru v Palmar Properties Ltd.* referred to above, good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. I find that, the Landlord's desire to use the rental unit for himself may not have been the primary reason for ending the tenancy, I find the Landlord was nevertheless partially motivated to end the tenancy when the Tenant refused to enter into a new tenancy agreement in which the Tenant would be required to pay an additional \$600.00 per month for rent. As such, I find the Landlord was not acting in "good faith" as that expression is used in section 49(3) of the Act. Based on the foregoing, I order the 2 Month cancelled. The tenancy will continue until it is lawfully ended in accordance with the Act.

As the Tenant has been successful in the Application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

As the 2 Month Notice has been cancelled, the Tenant's claim for an order that the Landlord comply with the Act, Regulations and/or tenancy agreement is dismissed with leave to reapply. As such, the Tenant has the option of making a new application for dispute resolution to make that claim.

### Conclusion

The 2 Month Notice is cancelled. The tenancy will continue until it is lawfully ended in accordance with the Act.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee for the Application.

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 24, 2022

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Residential Tenancy Branch