



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Code            CNR, FFT  
                                 CNL, FFT

### Introduction

This hearing was convened as a result of two Applications for Dispute Resolution made by the Tenant pursuant to the Residential Tenancy Act (the Act). In the first application, made on November 29, 2022, the Tenant requested:

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 22, 2022 (the Two Month Notice); and
- an order granting recovery of the filing fee related to the dispute of the Two Month Notice.

In the second application, made on December 8, 2022, the Tenant requested:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2022 (the 10 Day Notice); and
- An order granting recovery of the filing fee related to the dispute of the 10 Day Notice.

The Tenant attended the hearing and was accompanied by JM, a witness. The Landlord attended the hearing and was represented by MB, legal counsel. The Tenant, JM, and the Landlord provided affirmed testimony.

At the beginning of the hearing, the parties agreed that outstanding rent is no longer an issue and that the only matter to address is the Two Month Notice. Therefore, I find that the Tenant's application to dispute the 10 Day Notice is dismissed without leave to reapply. It has not been considered further in this decision.

The Tenant testified the Notice of Dispute Resolution Proceeding package relating to the Two Month Notice was served on the Landlord by registered mail. MB acknowledged receipt of these documents and confirmed there were no issues regarding service. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Landlord did not submit documentary evidence in response to the Tenant's applications.

The parties were given an opportunity to present evidence in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

#### Issues to be Decided

1. Is the Tenant entitled to an order an order cancelling the Two Month Notice?
2. Is the Tenant entitled to recover the filing fee?
3. Is the Landlord entitled to an order of possession?

#### Background and Evidence

The parties agreed the tenancy began on August 1, 2007, that rent of \$1,675.00 is due each month, and that the Landlord holds a security deposit of \$760.32.

The Landlord testified the Two Month Notice was served on the Tenant by registered mail. The Tenant confirmed receipt of the Two Month Notice on December 5, 2022. The 10 Day Notice submitted into evidence is signed and dated, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

The Landlord testified that he is 81 years old and has owned the rental property since 1988. He currently lives in his principal residence not far away from the rental property. The Landlord testified that he intends to move into the rental property as soon as the Tenant has vacated.

The Landlord testified there are two main reasons he wishes to end the tenancy and move into the rental property. First, he wishes to do some work in his primary residence and in the rental property. The Landlord testified that the work he intends to perform does not require permits.

Second, the Landlord testified that he needs to rearrange his affairs and wants to see if living in the rental property will suit his long-term needs better than his primary residence. The Landlord testified that the rental property faces south and has a better view. The Landlord testified that he plans to make the rental property his home and will hire movers and occupy the rental property once the Tenant has vacated. The Landlord testified that he intends to have utilities in his name and will receive mail at the rental property. The Landlord testified he will decide after a year passes whether or not to remain in the rental property or to sell one of the properties.

The Landlord testified that he has no ulterior purpose and intends to move in and occupy the rental property for a year or more.

In reply, the Tenant submitted that the Two Month Notice was not issued in good faith. The Tenant testified the house is not up to health and safety standards, and suggested that the Two Month Notice is a way to avoid the Landlord's obligation to repair and maintain. The Tenant referred to evidence regarding complaints regarding the condition of the rental unit over the past several years. Specifically, the Tenant referred to a roof leak (which has been repaired), carpeting that was beyond its useful life, mold in the rental property, and issues with the condition of the front stairs. These complaints were partially addressed in correspondence to the Landlord dated May 5, 2022.

The Tenant also referred to a document which describes a number of issues with the rental property and includes photographs:

- kitchen ceiling, walls, floors, cabinets, and counter;
- main floor bathroom, cabinet, and bathtub;
- stairs to the second floor;
- second floor shower;
- front stairs, back shed, and fence;
- furnace.

The Tenant also referred to an Expanded Fungal Report dated May 25, 2022, and additional photographic evidence of the rental property.

The Tenant suggested that the Landlord should have addressed problems raised during the tenancy rather than end the tenancy and move into the rental property.

On behalf of the Landlord, MB submitted that the Landlord acknowledges the condition of the rental property but that it is not relevant to the Landlord's intention to occupy it.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the Act permits a landlord to 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. In this case, I find the Two Month Notice was issued on the basis that the rental unit will be occupied by the Landlord.

The Tenant submitted that the Two Month Notice was not issued in good faith. She submitted that her repeated requests for repairs to the rental property have not been addressed and that the Two Month Notice is an attempt to avoid the Landlord's obligation to repair and maintain the rental property.

Policy Guideline #2A describes "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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA 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 (section 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 demonstrate 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.

In this case, I find the Landlord has met the burden of demonstrating the Two Month Notice was issued in good faith. I accept that the Landlord intends to occupy the rental property for a year or longer as he rearranges his affairs. The relatively minor work the Landlord intends to perform while living in the rental property is not a sufficient basis to conclude the Landlord does not intend to occupy the rental property.

In addition, while I accept that the Tenant expressed concerns about the condition of the rental unit during the tenancy, I find there is insufficient evidence before me to conclude that the Landlord is ending the tenancy to avoid his obligation to repair and maintain the rental property. Despite the Tenant's concerns about repairs and maintenance, I find it is more likely than not that the Landlord intends to occupy the rental property.

Considering the above, I find there is sufficient evidence before me to uphold the Two Month Notice. Therefore, I order that the Tenant's requests to cancel the Two Month Notice and to recover the filing fee are dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant an order of possession in favour of the Landlord. In this case, I have reviewed the Two Month Notice and find that it complies with section 52 of the Act. Accordingly, I grant the Landlord an order of possession, which will be effective two days after it is served on the Tenant.

### Conclusion

The Tenant's requests for orders cancelling the Two Month Notice and to recover the filing fee are dismissed without leave to reapply.

By operation of section 55(1) of the Act, the Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed in 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: January 31, 2023

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Residential Tenancy Branch