



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

On September 12, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act" and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that his Notice of Hearing package, Amendment, and evidence was served to the Landlord by registered mail on or around September 26, 2022, and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Tenant's Notice of Hearing package, Amendment, and evidence. As such, this evidence was accepted and considered when rendering this Decision.

The Landlord confirmed that he did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy originally started on or around February 1, 2021, that rent was currently established at \$1,400.00 per month, and that it is due on the first day of each month. A security deposit of \$700.00 was also paid. A copy of a signed tenancy agreement was not submitted because the Landlord failed to create one as required by Section 13 of the *Act*.

The Landlord advised that the Notice was served to the Tenant by hand on August 31, 2022. The reason the Landlord served the Notice is because "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)." As well, the Landlord indicated that it would be "The landlord or the landlord's spouse" that would be occupying the rental

unit. The effective end date of the tenancy was noted as October 31, 2022, on the Notice.

The Landlord testified that he lives in the upper unit with his family, and that he has been experiencing significant marital difficulties with his partner, which has resulted in him contemplating moving out on multiple occasions. Due to these disputes, he has had to leave the house and live at friend's places or the garage, and he has even slept in the garage. He stated that the police were called to one domestic dispute, and it was determined that his partner was at fault. It is his belief that if he could live in the rental unit below, it would provide a separate living situation that he could retreat to, that would still allow him to be close to his daughter. As well, he submitted that his aging father, due to his current health conditions, may need to move in with him as well.

The Tenant advised that he noticed a nanny or a nurse move in with the Landlord around mid-2022, and he speculated that it is possible that this person might move into the rental unit instead.

The Landlord advised that this person was his sister-in-law, and that she moved in with them approximately a year ago. He stated that she does not want to live there anymore due to the difficulties living with her sister, and she is also looking to move out.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice, while the dispute address is noted as the same as the

Landlord's address, I am satisfied that all parties understood that the dispute address and the Landlord's address were different. As such, I find it appropriate to amend the Notice to correct this discrepancy, pursuant to Section 68 of the *Act*.

In considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

I also find it important to note that Policy Guideline # 2A discusses good faith and states that:

"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... 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... 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."

When reviewing the totality of the evidence and testimony before me, I acknowledge that the Landlord may be experiencing significant personal hardship. However, the Landlord did not submit any documentary evidence to corroborate any of his testimony, and had significant time to do so. Based on my assessment of the testimony before me, I am not satisfied, on a balance of probabilities, that the Landlord has sufficiently established that the Notice was served in good faith. As such, I find that the Notice of August 31, 2022, is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

### Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for

Landlord's Use of Property of August 31, 2022, to be cancelled and of no force or effect.  
This tenancy continues until ended in accordance with the *Act*.

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 30, 2023

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Residential Tenancy Branch