



# 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* ("Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated August 25, 2022 ("2 Month Notice"), pursuant to section 49.

The landlord, the landlord's agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 70 minutes from 1:30 p.m. to 2:40 p.m.

The landlord's agent confirmed the names and spelling for her and the landlord. The tenant confirmed his name and spelling. The landlord's agent and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord stated that her daughter, who is her agent, had permission to speak on her behalf and assist her with English language translation at this hearing.

The landlord's agent confirmed that the landlord owns the rental unit. She provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them, or act as their agent or advocate. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given multiple opportunities at the beginning and end of this hearing to settle and declined to do so.

I cautioned the tenant that if I dismissed his application without leave to reapply, I would uphold the 2 Month Notice, end this tenancy, and issue a two (2) day order of possession against him. The tenant affirmed that he was prepared for the above consequences if that was my decision.

I cautioned the landlord and her agent that if I cancelled the landlord's 2 Month Notice, I would not issue an order of possession against the tenant and this tenancy would continue. The landlord's agent affirmed that the landlord was prepared for the above consequences if that was my decision.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant confirmed receipt of the landlord's evidence. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's evidence.

The tenant confirmed personal receipt of the landlord's 2 Month Notice on August 25, 2022. The landlord's agent stated that the tenant was served on the above date using the above method. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on August 25, 2022.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the "eastern suite" description in the rental unit address. The landlord's agent consented to the above amendment. The tenant did not dispute same. I find no prejudice to either party in making this amendment.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use of property?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 6, 2016. Monthly rent in the current amount of \$610.00 is payable on the first day of each month. A security deposit of \$285.00 was paid by the tenant. Both parties did not sign a written tenancy agreement, as only a verbal agreement was reached. The tenant continues to reside in the rental unit. The rental unit is a room in a house, where the landlord lives in a separate suite in the same house, and the landlord and tenant do not share a kitchen or bathroom with each other.

The tenant confirmed that he seeks to cancel the landlord's 2 Month Notice. The landlord confirmed that she disputes the tenant's application and seeks an order of possession against the tenant.

A copy of the landlord's 2 Month Notice was provided for this hearing. Both parties agreed that the effective move-out date on the notice is November 6, 2022, indicating the following reason for seeking an end to this 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 family member will occupy the unit.*
  - *The landlord or the landlord's spouse.*

The landlord's agent testified regarding the following facts. The landlord wants to take back the tenant's room in the house. The landlord's grandchild, who is the daughter of the landlord's agent, and is turning 9 this year, wants to move into the tenant's rental unit. She has not had her own room in the past. The landlord's agent talked to her mother, the landlord, to take back the tenant's rental unit for the daughter of the

landlord's agent. The landlord provided evidence with explanations. The landlord never asked the tenant to pay cash rent payments. The landlord is not trying to hide her legal name from the tenant, as the tenant claims. The landlord never said that rent was an all-inclusive price, to the tenant. The landlord did not demand a payment before the tenant moved in, and the tenant paid rent on May 8, 2016, two days after he moved in. The landlord has her own kitchen and bathroom at the rental unit and shares a separate suite with her daughter (landlord's agent) and granddaughter.

The tenant testified regarding the following facts. He has been living at the rental unit since May 6, 2016. Things were ok until June 2022. The tenant asked the landlord if he could pay rent to her, by cheque. The landlord asked the tenant to share in the utility costs and the tenant refused. The landlord did not provide any amount for the utilities to the tenant. The tenant said that it was an illegal rent increase, and it was not allowed. Two months later, the tenant received the 2 Month Notice from the landlord. The landlord asked the tenant to move out. The tenant does not know if the person qualifies as a close family member. The tenant was told that the landlord's husband would be taking back the rental unit as a study. The tenant submitted a photo of the house, which is a big property. There are four similar rental units occupied by four tenants total, one for each room, including the tenant and three other occupants. The landlord picked the tenant to evict because he is the longest tenant, and maybe he pays relatively lower rent, compared to the other tenants. On December 23, 2022, the tenant spoke to the occupant who moved in most recently, in the last one to two years, who told the tenant that his rent was raised by \$50.00, from \$700.00 to \$750.00 per month, including utilities.

The tenant stated the following facts. It is a huge house, and the landlord has the "lion's share" of the first floor as well as a portion of the second floor. There is a living room and kitchen that the landlord uses on the first floor. The four rooms, which each have their own bathrooms except one, are occupied by the four tenants are on the first floor. The rental unit rooms are at the left and back sides of the house. The landlord occupies the second floor with her daughter and granddaughter. All four tenants share the same communal kitchen. The tenant believes the landlord is trying to evict him because he pays the lowest rent, and he is not easily manipulated to pay illegal rent to the landlord. The landlord only picked the tenant to move out, when there are three other tenants at the same property. The landlord told the tenant that she needed extra money from him for utilities because of inflation, but if the tenant moves out, the landlord will be giving up 1/4 of her rental income that she receives from the tenant.

The landlord's agent stated the following facts in response to the tenant's testimony. There are four tenants at the rental property and the other three tenants pay the same rent as the tenant. There are not as many rooms as the tenant says and he has never been to the second floor. The landlord's family is growing so the landlord has to arrange her family members to occupy the rooms. The landlord only asked the tenant to share in the utilities, but she did not provide an amount to the tenant. It is inappropriate for the tenant to comment on other tenants and their rent or utility payments. The landlord now intends to move into the rental unit and her granddaughter intends to move into the landlord's room, which is a master bedroom. The tenant's rental unit and the master bedroom are the same size rooms in the house. The landlord is getting old, and her granddaughter is getting noisy, so that is why the landlord wants to move into the rental unit and her granddaughter needs her own room.

The landlord's agent stated the following facts in response to the tenant's questions during this hearing. It is irrelevant who the male person is living in the house with the landlord. He is a family member. He is a family friend. He is the landlord's partner. He is actually the landlord's boyfriend and not a family member. It is irrelevant who the owners of the rental unit are. The landlord and her daughter are owners of the rental unit. The landlord does not have an intention to re-rent the rental unit to new tenants, it is just for "family use."

### Analysis

I find that I have jurisdiction to decide the tenant's application because it is not excluded by section 4(c) of the *Act*. Although the landlord (owner) and the tenant live in the same house, they do not share a kitchen or bathroom with each other.

### Credibility

I found the tenant to be a more reliable and credible witness, than the landlord's agent at this hearing. I found the tenant's testimony to be clear, convincing, consistent, and straightforward, as it did not change throughout this hearing.

Conversely, I found the landlord's agent to be a less credible and less reliable witness at this hearing. I found that her testimony frequently changed throughout this hearing, depending on my questions. I found her explanations to be unreasonable and improbable. I find that the landlord's agent was not accurately interpreting and translating for the landlord, as the tenant pointed out inaccuracies and the landlord's agent did not deny same.

### Burden of Proof

During this hearing, I informed both parties that the landlord had the burden of proof, on a balance of probabilities, to prove the reason for issuing the 2 Month Notice to the tenant. The *Act*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of the reason selected on the 2 Month Notice.

The landlord confirmed receipt of the tenant's application, which includes instructions regarding the hearing process. The landlord received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP"), which contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed both parties that I had 30 days from this hearing date, to issue a written decision.

The landlord received a detailed application package from the tenant, including the NODRP document, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to the landlord to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the

landlord to provide sufficient evidence of her 2 Month Notice, since she chose to issue it on her own accord.

The following RTB *Rules* are applicable and state the following, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord and her agent did not properly present the landlord's evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the landlord and her agent failed to sufficiently explain and present their reasons and evidence for issuing the 2 Month Notice to the tenant.

This hearing lasted 70 minutes, which is more than the 60-minute maximum hearing time, so the landlord and her agent had ample time to present the landlord's evidence and respond to the tenant's submissions. I repeatedly asked the landlord and her agent if they had any other information to present and if they wanted to respond to the tenant's submissions.

*Findings*

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 intends, in good faith, to occupy the rental unit.

According to section 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by filing an application for dispute resolution within 15 days after the date the tenant received the notice. The tenant claimed that he received the 2 Month Notice on August 25, 2022,

and he filed his application to dispute it on the same date. The tenant's application is within the 15-day time limit under the Act. The onus shifts to the landlord to justify the basis of the 2 Month Notice. I informed both parties about the above information during this hearing.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, states the following, in part, in section "B. Good Faith:"

*In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) 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: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*

*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. 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 (s.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 suggest 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.*



I find that the landlord's granddaughter does not qualify as a landlord or spouse, pursuant to section 49(3) of the *Act*. The landlord's agent testified that only she and the landlord are owners of the rental unit.

Although the landlord's agent is a landlord and owner of the rental unit, her daughter is not. The landlord checked off the reason that either the landlord or a spouse will occupy the rental unit.

While the landlord's agent later claimed during the hearing that the landlord intended to personally move into the rental unit, this was only after I informed her that her daughter was not a landlord or a spouse, and the landlord issued the notice for that reason only.

As noted above, I find that the landlord's agent changed her testimony frequently throughout this hearing, did not provide accurate English language translation at this hearing, and she was a less credible witness, compared to the tenant. Therefore, I do not find it to be reasonable or probable that the landlord, the landlord's agent, or any spouses intend to move into the rental unit. I also find that it is unreasonable to suggest that the landlord would move out of her master bedroom, to live in the tenant's rental unit, so that the 9-year-old daughter of the landlord's agent, who is a child and has never had her own room, can occupy the landlord's master bedroom on her own. Further, the tenant claimed that he has to share a kitchen with three other tenants. I find it unreasonable that the landlord would leave her separate suite, which has its own kitchen and bathroom, to live in the tenant's rental unit and share a common area, including a communal kitchen, with three other tenants. I also find it unreasonable that the landlord will travel from the first floor, where the rental unit and other tenant rooms are located, to the second floor, where the landlord's agent and daughter live, everyday to use a separate kitchen.

The tenant said that he was told that the landlord's husband would occupy the rental unit as an office study. However, during this hearing, the landlord's agent reluctantly changed her testimony that the landlord's boyfriend is not the landlord's spouse or a family member, but just a boyfriend. This was only after the tenant revealed that the landlord's agent was not translating the landlord's answers accurately or correctly, because the landlord actually used the word "boyfriend," while the landlord's agent translated it as "partner" to me and the tenant, during this hearing.

I also find that the landlord had ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons explained below.

The tenant provided undisputed, affirmed testimony that the landlord asked the tenant to pay extra money for utilities in June 2022, only two months before the landlord issued the 2 Month Notice to the tenant. The landlord's agent agreed with same during this hearing, clarifying only that the landlord did not provide an amount for the utilities. Regardless of whether an amount was provided for utilities by the landlord, the tenant refused to pay any additional money for utilities, and the landlord issued a notice to end tenancy to the tenant, shortly thereafter.

The landlord did not provide testimonial evidence that she personally intends to move into the rental unit in good faith, when she wants to move in, or why she wants to move into the tenant's specific rental unit, as opposed to another unit in the same house. The landlord's agent simply changed her testimony to state that the landlord wanted to move into the rental unit, once I told her that her daughter does not qualify as a close family member.

The tenant provided undisputed, affirmed testimony that there are other rooms in the shared house, owned by the landlord, that could be occupied. The landlord's agent testified that the rooms in the house were about the same size, and there are three other rental units being occupied by other tenants, that she said are paying the same rent as the tenant. Neither the landlord, nor her agent, indicated why another comparable unit could be occupied, in the same house, rather than the rental unit.

I find that the above demonstrates that there are conflicts and tensions between both parties in this tenancy, which questions the landlord's good faith intention for issuing the 2 Month Notice to the tenant.

As noted above, it is the landlord's burden of proof to show that the landlord, the landlord's agent, or their spouses intend to move into the rental unit in good faith, as this was the reason indicated the 2 Month Notice to the tenant. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met the burden of proof.

Accordingly, the tenant's application to cancel the landlord's 2 Month Notice is granted. The landlord's 2 Month Notice, dated August 25, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession for landlord's use of property.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is granted.

The landlord's 2 Month Notice, dated August 25, 2022, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

The landlord is not entitled to an order of possession for landlord's use of property.

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 16, 2023

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Residential Tenancy Branch