



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

On August 24, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's 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").

The Tenant attended the hearing, and the Landlord attended the hearing as well, with C.X. attending as an agent for the Landlord. 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 the Landlord was served with the Notice of Hearing and evidence package by email on September 15, 2022, and C.X. confirmed that the Landlord received this package. Based on this undisputed testimony, I am satisfied that the Landlord was duly served the Tenant's Notice of Hearing and evidence package. As this evidence has been served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

C.X. advised that the Landlord did not submit any documentary evidence for consideration on this file.

All parties acknowledged the evidence submitted and 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 dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background, Evidence, and Analysis

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 most current tenancy agreement started on November 1, 2020, and that the tenancy was currently a month-to-month tenancy. Rent was presently established at \$2,000.00 per month and was due on the first day of each month. A security deposit of \$1,000.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that the Notice was emailed to the Tenant on August 9, 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 checked off the box that the rental unit will be specifically occupied by "The child of the landlord or the landlord's spouse." The effective end date of the tenancy was noted as October 8,

2022. The parties were informed that, as per Section 53 of the *Act*, this incorrect effective end date would automatically self-correct to October 31, 2022.

C.X. advised that the Landlord served this Notice because his daughter was living in a condo that she owned, but wanted to move into the rental unit because she wanted a bigger space with a bigger yard. He also testified that additional family would move in later, but their visas were not approved yet. He initially stated that she was not sure what she would be doing with the condo when she had originally planned to move into the rental unit, but then he contradictorily stated that the plan was for her to either rent the condo, or sell it, after she moved. He then submitted that the daughter would rent out the condo because the price was too low to sell it in October 2022, but now she may end up selling it because prices have recovered.

He testified that the daughter was “not fully settled down” and that it was “not a rush thing”. He then advised that the daughter has had a big dog in the condo for two years, and that the rental unit has a bigger yard. As well, he submitted that the daughter started a new job where she is much busier, so her dog can run freely in the yard as opposed to her paying for someone to walk it. Finally, he stated that the daughter lives far away from the Landlord, and the rental unit is much closer. The Landlord did not submit any statement from the daughter, or any other documentary evidence, confirming that it was her intention to occupy the rental unit.

The Tenant advised that, as per his documentary evidence submitted, the Landlord sent a text message giving less than the required two, full months’ notice to vacate. As well, he had to inform the Landlord that the required form needed to be served in order to end the tenancy, as a text message would not suffice. He noted that the text message indicated that the reason given by the Landlord to end the tenancy was “due to family reasons”, which is vague.

### 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 a 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. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

With respect to the Notice, 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.

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 submissions before me, I note that C.X. testified that the Notice was served because the plan was to have the daughter, and also unnamed family members, move into the rental unit. However, these unnamed family members did not have their visas approved prior to service of the Notice. Firstly, the Landlord was informed that unless these unnamed family members were children of the Landlord or the Landlord's spouse, these people would be ineligible to be considered as acceptable persons that could move in based on the Notice. In addition, even if these unnamed family members did happen to be children of the Landlord or the Landlord's spouse, their visas were not approved prior to service of the Notice. So, they could not have fulfilled the requirement to move in within a reasonable period of time

after the effective date of the Notice of October 31, 2022. This submission about the unnamed family members causes me to question the legitimacy of the Landlord's purpose for using the rental unit.

With respect to the reason that the Landlord's daughter was to move into the rental unit, I do not find C.X.'s submissions to be consistent, reliable, or persuasive, and this causes me to question the truthfulness or legitimacy of these submissions. Moreover, there has been no documentary evidence submitted to corroborate that it was the daughter's plan to move into the rental unit prior to service of the Notice. If this truly was the plan, it would not have been difficult to obtain and then submit documentary evidence to support this alleged plan.

Considering the contradictory and inconsistent submissions of C.X. during the hearing, I am suspicious that these submissions are a fabrication of a false narrative in an attempt to portray that it had been the Landlord's intention to use the rental unit in good faith, prior to service of the Notice. I do not find C.X.'s testimony to be credible or compelling. In addition, as noted above, the burden is on the Landlord to prove that the Notice was served in good faith, and in the approximately four months that the Landlord was aware of this dispute, it would not have been difficult to submit some documentary evidence to support the reason on the Notice. A complete lack of documentary evidence supports a finding that, more likely than not, the reason on the Notice was not valid.

When weighing the totality of the evidence and submissions before me, I am doubtful that the Notice was served in good faith. I find, on a balance of probabilities, that the Landlord's reasons above were created to disguise an ulterior motive for serving the Notice.

Ultimately, based on the doubts raised, I am not satisfied that the Landlord has established persuasive grounds to justify service of the Notice. Therefore, I find that the Notice of August 9, 2022, is cancelled and of no force and effect.

### Conclusion

Based on the above, I hereby Order that the Two Month Notice to End Tenancy for Landlord's Use of Property of August 9, 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 16, 2023

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Residential Tenancy Branch