



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, CNL, LRE, OLC, FFT

### Introduction

This hearing dealt with the tenant's application, filed on October 3, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated October 31, 2022 ("1 Month Notice"), pursuant to section 47;
- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 25, 2022 ("2 Month Notice"), pursuant to section 49;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord and the tenant attended this 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 45 minutes from 11:00 a.m. to 11:45 a.m.

The landlord and the tenant confirmed their names and spelling. They both provided their email addresses for me to send this decision to both parties after the hearing.

The landlord confirmed that she 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, the landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

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

Both parties confirmed that they did not want to settle this application, they were ready and wanted to proceed with this hearing, and they wanted me to make a decision. Both parties were given multiple opportunities to settle this application and declined to do so. Both parties were given additional time during this hearing and discussed settlement but declined to settle this application.

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

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

#### Preliminary Issue – Service of Documents

The landlord 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 landlord stated that the tenant was served with a copy of the landlord's 2 Month Notice on September 25, 2022, by way of posting to the tenant's rental unit door. The tenant confirmed receipt of the landlord's 2 Month Notice on September 25, 2022, by way of posting to his rental unit door.

In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on September 25, 2022.

The tenant confirmed that he filed this application on October 3, 2022, to dispute the 2 Month Notice.

#### Preliminary Issue – 1 Month Notice

During this hearing, the landlord stated that she wanted her 1 Month Notice to be cancelled and she did not want to pursue an order of possession against the tenant, based on that notice.

I informed the landlord that her 1 Month Notice, dated October 31, 2022, and effective on November 30, 2022, was cancelled and of no force or effect. I informed her that she would not obtain an order of possession against the tenant based on this notice. She affirmed her understanding of and agreement to same.

#### Preliminary Issue – Ongoing Tenancy Claims

The following RTB *Rules* are applicable and state (my emphasis added):

##### *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.**

##### *6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, **if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

At the outset of this hearing, I informed both parties that Rules 2.3 and 6.2 of the RTB *Rules* allow me to sever issues that are not related to the tenant's main urgent application. The tenant applied for 5 different claims in this application.

I informed the tenant that he was provided with a priority hearing date, due to the urgent nature of his application to cancel the landlord's 1 Month Notice and 2 Month Notice. I informed him that these were the central and most important, urgent issues to be dealt with at this hearing. After 45 minutes in this hearing, there was insufficient time to deal with the tenant's remaining ongoing tenancy claims, as I informed both parties that the maximum time for this hearing was 60 minutes.

I informed the tenant that if I continued his tenancy and cancelled the landlord's 2 Month Notice, he would have leave to reapply in the future, for the remaining ongoing tenancy claims in his application, as they would be severed, pursuant to Rules 2.3 and 6.2 of the *RTB Rules*.

I notified the tenant that if I upheld the landlord's 2 Month Notice and ended his tenancy, the remaining claims in his application, would be dismissed without leave to reapply, since they relate to an ongoing tenancy only.

The tenant affirmed his understanding of the above information, during this hearing.

#### 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?

Is the tenant entitled to recover the filing fee for this application?

#### 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. The tenant began residing at the rental unit on September 1, 2005, pursuant to an agreement with the former landlord. The landlord purchased the rental unit from the former landlord, and signed a new written tenancy agreement with the tenant, beginning on May 1, 2022. Monthly rent in the current amount of \$660.00 is payable on the first day of each month. A security deposit of \$330.00 was paid by the tenant to the former landlord and it was transferred to the

landlord, who continues to retain this deposit in full. The tenant continues to reside in the rental unit, which is a suite in a house, which has another suite #2 and a basement suite, at the same residential property.

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 December 31, 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 testified regarding the following facts. She bought the residential property in May 2022, to occupy the majority of the home. She intended to move into the unit #2 above, and then move downstairs eventually, to accommodate her growing family. Unit #2 was in a worse condition and that tenant was paying 20% more rent than this current tenant, so this is not about money. The landlord negotiated a reduced rent for the tenant from \$700.00 to \$660.00 per month, when the tenant's tenancy began. The landlord's cousin said that she wanted to move to the City, and she needed a 1-bedroom unit. The landlord is growing her family and needs space. The landlord's cousin will now be using unit #2 and will be assisting the landlord with her growing family. Therefore, the landlord needs the tenant's rental unit to use as her office and guest room. The landlord provided 3 month's notice for the tenant to move out.

The landlord stated the following facts. The landlord provided a layout of the property in her documents submitted as evidence for this hearing. The landlord provided a proof of service for the 2 Month Notice. The landlord provided an affidavit from January 2023, regarding her clear intentions to use the rental unit space for her home. The situation has caused stress for the landlord, as she has had nowhere to live since January 2023. The landlord is lucky that the downstairs tenants moved out early because she was able to move in last week. The landlord provided reference letters from other people stating that she is a good landlord, she has not raised the rent, and she does not invade her tenant's spaces. The tenant claims that the landlord is doing this for money but if that was the case, then the landlord would have only evicted the tenant, not the other tenant in unit #2, who was paying more rent. The landlord negotiated \$40.00 less in rent, for the tenant to pay to her.

The tenant testified regarding the following facts. The landlord has a place to live, so her need to occupy the rental unit is a “moot point.” She is not doing this in good faith. The previous tenant JF from unit #2 was evicted July 1. The landlord spent 3 months renovating unit #2 and moved in September 20, 2022. The tenant provided a statement from a neighbor, NG, who spoke with the landlord. The landlord says that she is evicting for her cousin to move in, which is her family, but that is not covered by the *Act* to do that. The tenant provided text messages from the landlord, where the landlord claimed that the tenancy agreement would not change, so the tenant signed it without reading it because the landlord told him that nothing had changed. The tenant agreed to pay \$660.00 per month in rent because the landlord did not have the paperwork for the \$700.00 per month in rent. The original tenancy agreement was \$700.00, including cable and internet, with the former landlord.

The tenant stated the following facts. When the tenant said he wanted to dispute the 2 Month Notice, there was a “campaign of harassment” against him. The landlord had a camera pointed at his unit, outside the window. The tenant has a 15-year-old daughter at the rental unit, half the time, and she lives 1 week with him and 1 week with her mother. The landlord removed the camera on October 31, 2022, but placed it up again on November 27, 2022, saying that it was moved 5 feet off the ground. The tenant feels pressure to move. The tenant does not care about the storage because of the rats. The tenant has lived in the rental unit for 17.5 years and has not had any issues, has never been late on rent, is not loud, does not have any parties, and is here to “play by the rules.” The landlord is not acting in good faith and the tenant provided text message evidence about this.

The landlord stated the following facts in response. She has been communicative with the tenant, as per the text messages submitted by the tenant, in his evidence. The landlord has always made her plans and intentions clear. She provided 6 days notice to do an inspection of the condition of the rental unit, to decide how she wants to live there. The camera and storage issues are not relevant to the 2 Month Notice. The tenant had concerns regarding the camera, so she took it down the same day. She put the camera back up and offered to show the tenant and review it with him, and it does not face his room. The tenant warned the landlord about theft and break-ins to his car, which is the reason why the landlord put the cameras up. The landlord needs more space, she is growing her family, and she bought the house for this reason. It has been her intent since day 1.

The tenant stated the following facts in response. The tenant’s side window of his car was smashed in, and the camera was not facing at that angle.

## Analysis

### Application and Rules

The tenant, as the applicant, received an application package from the RTB, including instructions regarding the hearing process. The tenant served his application to the landlord and the landlord confirmed receipt of same. The tenant received a document entitled “Notice of Dispute Resolution Proceeding” (“NODRP”) from the RTB, after filing this application. This document 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):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- *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 and links to the RTB website and *Rules* are also provided in the NODRP. I informed both parties that I had 30 days to issue a written decision after this hearing. Both parties affirmed their understanding of same.

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

to the tenant to provide sufficient evidence of his claims, since he chose to file this application on his 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 tenant did not properly present his application, claims, and 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*.

This hearing lasted 45 minutes, so the tenant had ample time and multiple opportunities to present his application and respond to the landlord's claims. I repeatedly asked the tenant if he had any other information to present and if he wanted to respond to the landlord's evidence.

I find that the tenant failed to sufficiently review and explain the documents in proper detail, that he submitted with his application.

*Findings*

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within 15 days after he received the notice. The tenant claimed that he received the 2 Month Notice on September 25, 2022. The tenant filed this application to dispute the 2 Month Notice on October 3, 2022.

Therefore, the tenant is within the 15-day time limit under the *Act*. Accordingly, where the tenant applies to dispute the 2 Month Notice within the deadline, the burden of proof



is on the landlord to prove the reason on the 2 Month Notice. I informed both parties of the above information during this hearing and they affirmed their understanding of same.

Section 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 of the landlord intends in good faith to occupy the rental unit.

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 provided sufficient testimonial and documentary evidence that she intends, in good faith, to occupy the rental unit for at least 6 months, after the tenant vacates, pursuant to the 2 Month Notice. The landlord is the owner of the rental unit and qualifies as a landlord to move into the rental unit, pursuant to section 49 of the Act. I find that the landlord has no ulterior motives to end this tenancy. I find that the landlord does not intend to re-rent the rental unit to obtain a higher rent.

I accept that the affirmed submissions of the landlord, that she intends to occupy the rental unit in good faith, in order to reside and accommodate her growing family. The landlord provided documentary evidence, including a sworn affidavit, dated January 31, 2023, which she specifically referenced during this hearing. The tenant did not dispute the authenticity or contents of the landlord's documents during this hearing.

I find that the tenant was unable to provide sufficient evidence to dispute the landlord's 2 Month Notice and to support his assertion that the landlord does not intend, in good faith, to occupy the rental unit.

The tenant referenced a witness statement that he provided as evidence for this hearing. However, the tenant did not produce this witness NG to testify at this hearing to verify the authenticity or contents of her statement or to be cross-examined by the landlord. The tenant did not produce witness JF, the former tenant of unit #2 at the same residential property, to testify at this hearing to provide direct evidence or to be cross-examined by the landlord. The tenant referenced details regarding tenant JF's tenancy at this hearing. I provided the tenant with an opportunity to call witnesses at this hearing, from the outset, and he said he did not want to do so.

I find that the tenant failed to provide sufficient evidence of the following: that the landlord's intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, or evidence to show that the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, to suggest that the landlord is not acting in good faith. I find that the tenant failed to provide sufficient evidence that the landlord owns other properties, where the landlord can reside. I find that the tenant failed to provide sufficient evidence that the landlord can occupy comparable vacant rental units in the property. This is as per Residential Tenancy Policy Guideline 2A above.

I find that the landlord is entitled to reclaim the tenant's rental unit, as part of the landlord's living space, which is contemplated and permitted by Residential Tenancy

Policy Guideline 2A. Although the landlord is currently using unit #2 and the basement at the residential property for her living space, I find that she also intends to occupy the tenant's rental unit and reclaim it as part of her living space. I find that the landlord's intent is not to have her cousin move into the tenant's rental unit.

I find that the landlord reclaimed unit #2 as part of her living space first, before serving a 2 Month Notice to the tenant. The landlord claimed that the former tenant of unit #2 was paying 20% more rent than the tenant. Therefore, I find that the landlord is not intending to obtain a financial profit by reclaiming the rental unit, for her own living space, and I find that this does not question the landlord's good faith intention.

The tenant identified storage and security camera issues with the landlord. However, the tenant continues to occupy the rental unit, despite the above issues. The tenant also testified, during this hearing, that he had no intention of vacating the rental unit, despite the above issues. The tenant failed to identify any previous RTB applications that he filed against the landlord, regarding the above issues.

I also note that the landlord provided the tenant with over 3 months notice to move out, even though the landlord was legally only required to provide 2 months notice to the tenant, as per section 49 of the *Act*. The landlord's 2 Month Notice is dated September 25, 2022, was received by the tenant on the same date, and provides an effective move-out date of December 31, 2022, which is over 3 months later. The tenant is still residing at the rental unit. I find that this shows the landlord's good faith intention.

I note that the landlord issued a 1 Month Notice to the tenant, which was received by the tenant on October 31, 2022, as per the tenant's application filed for this hearing. This is more than 1 month after the 2 Month Notice was first received by the tenant on September 25, 2022. The landlord provided a sworn affidavit, indicating that she issued the 1 Month Notice to the tenant after the 2 Month Notice, because the tenant was using the storage room at the residential property as a bedroom, which was contrary to the tenancy agreement, the City bylaw, and the provincial building code. I find that the landlord issuing the above 1 Month Notice to the tenant, which was cancelled during this hearing at the landlord's request, after the 2 Month Notice was first issued to the tenant, does not question the landlord's good faith intention to occupy the rental unit.

Based on a balance of probabilities and for the above reasons, I find that the landlord intends to occupy the rental unit in good faith for at least 6 months. I find that the landlord qualifies as a landlord and owner under section 49 of the *Act*. I find that the landlord has met her onus of proof under section 49 of the *Act*.

I dismiss the tenant's application to cancel the landlord's 2 Month Notice, without leave to reapply. Pursuant to section 55 of the *Act*, I grant an order of possession to the landlord, effective two (2) days after service on the tenant. I find that the landlord's 2 Month Notice, dated September 25, 2022, complies with section 52 of the *Act*. The effective date on the 2 Month Notice of December 31, 2022, has long passed, since it is now February 13, 2023, on the date of this hearing.

Throughout this hearing, I repeatedly informed the tenant that I could issue a two (2) day order of possession against him, if I upheld the landlord's 2 Month Notice and ended this tenancy. The tenant repeatedly affirmed his understanding of same.

Since I have ended this tenancy, the tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, and for an order restricting the landlord's right to enter the rental unit, is dismissed without leave to reapply. These claims relate to an ongoing tenancy only.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

I grant an order of possession to the landlord, effective two (2) days after service on the tenant. The tenant must be served with this order. Should the tenant fail to comply with this order, this order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's 1 Month Notice, dated October 31, 2022, is cancelled and of no force or effect.

The tenant's entire application is dismissed without leave to reapply.

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: February 13, 2023