



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated August 31, 2022 (the "Two Month Notice") pursuant to section 49.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Service of Dispute Resolution Documents

The Landlord acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"). I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

The Landlord relied on oral testimony for this hearing.

### Issue to be Decided

Is the Tenant entitled to cancel the Two Month Notice?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced in November 2019 with a previous landlord and is month-to-month. The Landlord purchased the property in January 2022. Rent is currently \$850.00 due on the first day of the month. The Tenant paid a security deposit of \$425.00.

A copy of the Two Month Notice has been submitted into evidence. It is signed by the Landlord and has an effective date of November 1, 2022. The reason for this notice is that "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)." The Two Month Notice includes a handwritten note which states (portion redacted for privacy):

as of last year and our paperwork [the Tenant] knew he had to be moved out cause landlord had to move in and he refused because he couldn't find a place for his household

The Tenant acknowledged receiving a copy of the Two Month Notice in person on August 31, 2022.

The Landlord testified that the Tenant had been served with the Two Month Notice and had agreed to move out this spring, but did not do so. The Landlord stated that he needs a home to live in and is now staying with friends. The Landlord testified that he had stopped living in his fifth wheel trailer since this past winter. The Landlord stated that the Tenant had refused to allow the Landlord to park his fifth wheel on the property next to the rental unit.

The Landlord stated that he wants to have his own home, which is why he had purchased the property. The Landlord stated that according to his property insurance, he is supposed to be living in the rental unit. The Landlord confirmed that he owns two mobile homes on the property, one of which is the rental unit, and the other mobile home is also tenanted. The Landlord stated that the tenants in the second mobile home are about to move out, and the home has been re-rented to new incoming tenants. The

Landlord acknowledged that he had also owned another home up the street from the rental unit, which has since been sold.

The Landlord stated he wants to move into the rental unit and not the other mobile home because the rental unit needs more renovations. The Landlord stated that the rental unit needs to have work done on the walls, ceiling, floor, and pipes. The Landlord stated that he plans to renovate and live in the rental unit for two years. The Landlord mentioned he was open to having the Tenant move back after the renovations were completed.

In response, the Tenant described a dispute with the previous landlord regarding the Tenant's roommate. The Tenant explained he was threatened to be moved out by the previous landlord and the pressure has been there ever since. The Tenant stated that he felt something was not right about what the Landlord and the previous landlord were doing. The Tenant stated he had not seen any proof of ownership of the property from the Landlord.

The Tenant stated that the Landlord could put his fifth wheel trailer next to the other mobile home, and the Landlord agreed.

### Analysis

Pursuant to section 49(3) of the Act, a landlord is permitted to end a tenancy if the landlord or a close family member of the landlord intends, in good faith, to occupy the rental unit.

Section 49(1) of the Act defines a landlord as an individual who, at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.

In this case, the Landlord has not submitted any documents proving ownership of the rental unit and the property on which it is situated. However, I accept the Landlord's testimony under oath that he is the sole owner.

Section 49(7) of the Act requires the notice given by the landlord under section 49(3) to comply with section 52, which states:

**Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Section 49(2)(a) further requires that the effective date of a landlord's notice under section 49(3) must be:

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I have reviewed a copy of the Two Month Notice and find that it complies with section 52 of the Act. I find the effective date of the Two Month Notice does not comply with section 49(2)(a)(ii) of the Act, as it does not fall on the day before the day rent is due. I find that pursuant to section 53(3) of the Act, the effective date is automatically corrected to November 30, 2022.

I find the Tenant was served with a copy of the Two Month Notice on August 31, 2022 in accordance with section 88(a) of the Act.

Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy for landlord's use with 15 days of receiving such notice. In this case, the Tenant had until September 15, 2022 to dispute the Two Month Notice. Records of the Residential Tenancy Branch indicate that the Tenant submitted this application on September 13, 2022. I find the Tenant made this application within the time limit required by section 49(8)(a) of the Act.

When a tenant makes an application to dispute a two month notice to end tenancy, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of

probabilities, the reasons set out in the notice and to demonstrate good faith in issuing the notice.

Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member ("Policy Guideline 2A") states that to "occupy" under section 49 of the Act means "to occupy for a residential purpose". This means the landlord or their close family member must intend in good faith to "use the rental unit as living accommodation or as part of their living space".

According to Policy Guideline 2A, 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.

Regarding the requirement of good faith, Policy Guideline 2A states:

*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 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.

(emphasis added)

In this case, I find the Landlord's primary purpose for issuing the Two Month Notice is to renovate the rental unit rather than to live in it. I find it was open for the Landlord to move into the second home on the property, but the Landlord chose to re-rent it to new

tenants instead. I find the only reason given by the Landlord for doing so was because the Landlord wants to renovate the rental unit. Furthermore, I find the Landlord stated that the Tenant could move back into the rental unit once the renovations were completed.

As mentioned above in Policy Guideline 2A, section 49 of the Act requires a landlord to have a good faith intention to occupy the property for a residential purpose, without an ulterior motive. I find the Landlord's intention to renovate the rental unit to be a clear ulterior motive that overshadows any intention to occupy the rental unit. Therefore, I conclude that the reasons given by the Landlord are not valid for issuing a two month notice to end tenancy under section 49(3) of the Act.

For reference, if a landlord wishes to end a tenancy for renovations or repairs, section 49.2 of the Act requires the landlord to make an application and prove that:

- (a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;
- (b) the renovations or repairs require the rental unit to be vacant;
- (c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;
- (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

In other words, the Act does not allow a landlord to end a tenancy for renovations by issuing a notice to end tenancy. A landlord must make an application and prove that the requirements under section 49.2 have been met. However, that is not the application presently before me.

I conclude the Landlord has not proven the stated reason for the Two Month Notice as well as a good faith intention to occupy the rental unit. Accordingly, I order that the Two Month Notice be set aside.

### Conclusion

The Two Month Notice is cancelled and of no force or effect. This tenancy will continue 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: February 13, 2023

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Residential Tenancy Branch