



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL-4M, FFT

### Introduction

This hearing was reconvened from a hearing on January 16, 2023 regarding the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- disputing a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use dated July 29, 2022 (the "Four Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord, the Landlord's spouse CJ, the Landlord's legal counsel MG, the Tenant, and the Tenant's legal counsel KS attended this reconvened hearing. Between the original and reconvened hearings, the parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Issues to be Decided

1. Is the Tenant entitled to cancel the Four Month Notice?
2. Is the Tenant entitled to reimbursement of the filing fee?

### 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.

The rental unit is a one-bedroom suite in a multi-unit complex. This tenancy commenced on May 1, 1983 with a previous landlord. The rental property was purchased by 1289671 BC. Ltd. in March 2021. The Landlord and her spouse CJ are owners of 1289671 BC. Ltd. Rent is currently \$588.00 due on the first day of each month. The Tenant paid a security deposit of \$50.00.

The parties had a prior dispute resolution proceeding (file number referenced on the cover page of this decision). That proceeding dealt with two month notices to end tenancy for landlord's use under section 49(4) of the Act issued to the Tenant and tenants in three other units in the building. The previous arbitrator accepted that 1289671 BC. Ltd. was a family corporation and upheld two of the notices to end tenancy. The arbitrator accepted that the Landlord and CJ would move into those two units and join them by installing a door.

The notice issued to the Tenant was set aside. Among other reasons, the previous arbitrator did not find it believable that the Landlord's son's family of five would be moving into the rental unit, a one-bedroom suite. The previous arbitrator found that the notice given to the Tenant was likely served for an ulterior purpose, such as evicting a tenant who is paying low market rent. The other notice set aside was for the Tenant's husband's unit adjacent to the rental unit.

In July 2022, the Landlord issued the Four Month Notice to the Tenant. Copies of this notice have been submitted into evidence. It has an effective date of November 30, 2022. The stated reason is that the Landlord will convert the rental unit for use by a caretaker, manager, or superintendent of the residential property. The Tenant acknowledged receipt of a copy of the Four Month Notice via email on July 29, 2022 but argued that she did not agree to accept service via email. The Tenant submitted a copy of this email into evidence, along with her reply to the Landlord dated July 29, 2022 requesting a hard copy. The Landlord stated that a copy of the Four Month Notice was also slipped under the Tenant's door by the Landlord's son, but the Tenant denied this.

According to the Landlord's written statement, the Landlord and CJ have managed the building since it was purchased in March 2021. The Landlord estimates that she and CJ receive one call every two weeks for CJ to repair something in the building. CJ has done work such as replacing a water heater, checking the heating, and recaulking a bathtub. The Landlord submits that she and CJ no longer want to be responsible for the day-to-day maintenance of the rental property, and would prefer to spend more time with their grandchildren. The Landlord submits that a couple, TM and SM, who own a

business in the same neighbourhood as the rental unit, would be willing to work as part-time resident caretakers while continuing their own business. According to the Landlord's written statement, TM and SM's duties would be to collect the rent and respond to complaints from tenants.

The Landlord stated that the Tenant had also asked to be caretaker, but she informed the Tenant that the position was already filled. The Landlord submitted that TM and SM are qualified to be residential caretakers due to their experience owning and operating three properties in British Columbia. The Landlord submitted that TM and SM do not have children to take care of, are familiar with operating residential property, and are able to make minor repairs.

The Landlord testified that she and CJ travel between two to four months per year to visit family. The Landlord stated that when they are away, sometimes their youngest son will look after the rental property. The Landlord stated that their family members have full-time jobs and no time to deal with the property. The Landlord stated that she and CJ are getting old and have been doing this business for so long, so they are tired.

The Landlord confirmed that of the two units in she and CJ were to move into, one is still being occupied by them and the other has been renovated and re-rented for \$2,900.00 per month. The Landlord acknowledged that she and CJ did not put a door between the two units.

The Landlord stated that she and CJ were abroad in summer 2022. The Landlord stated that she and CJ had talked to TM and SM prior to October 2022. According to the Landlord, there is no written agreement with TM and SM because the Landlord was not yet sure what would happen. When questioned as to why the Landlord did not have TM and SM work as caretakers during summer 2022, the Landlord indicated that she wanted to have TM and SM start at the time of the Landlord's choosing. The Landlord stated that she worked from abroad and dealt with tenants via email. The Landlord stated that she figured the Tenant would dispute the Four Month Notice and did not want to postpone her holiday. When questioned as to why TM and SM could not work as caretakers without moving into the building, the Landlord stated "we haven't prepared for that". According to the Landlord, they had a different plan. The Landlord stated that she wanted to teach the caretakers how to do things the she wanted to, and she was out of the country so she couldn't do it at that time.

The Landlord stated that when CJ is not able to do a job, they would hire companies or handymen to help. The Landlord denied that they had hired anyone else to manage the building.

The Landlord acknowledged that a one month notice to end tenancy for cause was issued to the Tenant in November 2022, due to a door that had been installed between the rental unit and the Tenant's husband's suite many years ago. That matter is under dispute in a separate dispute resolution proceeding.

The Landlord acknowledged that no permits or approvals for renovation have been submitted into evidence. The Landlord stated that minor renovations such as new cabinets and flooring do not need permits. The Landlord confirmed the plan is to have TM and SM move in as-is, with no renovation. The Landlord stated that the door leading to the Tenant's husband's unit will have to be closed.

When questioned as to the terms of the verbal agreement with TM and SM, the Landlord initially responded that questions about their salary are private. Counsel for the Landlord argued that the terms are not relevant since if the deal with TM and SM falls through, the Landlord can hire someone else to act as caretaker. Upon further questioning, the Landlord stated that they had discussed paying TM and SM a monthly salary of \$1,000.00. The Landlord stated that TM and SM would pay market rent. According to the Landlord, market rent for the rental unit without renovating would be \$2,200.00 per month. If the unit is renovated, the market rent would be \$2,500.00 to \$2,700.00. The Landlord acknowledged that under this arrangement, TM and SM would pay approximately \$600.00 more rent than the Tenant (\$2,200.00 market rent less \$1,000.00 salary). The Landlord agreed that the Tenant currently pays the lowest rent out of all the tenants in the building.

According to the Landlord, TM and SM were travelling abroad as of January 2023. The Landlord indicated that TM and SM's business is weather dependent and would be open for long hours in the summer. The Landlord was unsure whether TM and SM have caretakers for their other properties. The Landlord emphasized that TM and SM are interested in getting the job.

The Landlord acknowledged that another suite in the building became available for rent towards the end of September 2022. The Landlord stated the suite was renovated and rented six months prior to September 2022. The Landlord suggested that she didn't think it would become so busy at the time. When questioned as to why the caretakers

could not move into that suite when it became available at the end of September 2022, the Landlord stated that she has a plan and “we do business the way we want to”. The Landlord stated that they plan their business, and decide when to renovate or put someone in as a caretaker.

The Tenant stated that she received the first eviction notice a few days after the current owners took possession. The Tenant stated that before the first eviction, she was asked to complete a new application for a new tenancy, which she refused. The Tenant stated that in May or June 2022, she was in discussion with the Landlord about a long-term tenancy buyout. The Tenant confirmed that neither side had made an offer. The Tenant stated that the Landlord didn’t want to pay and she couldn’t afford to move out.

The Tenant submitted copies of emails from the Landlord into evidence.

- In an email dated May 19, 2022, the Landlord wrote: “First of all, thank you for having us in you place for discussing your tenancy. After discussing with other partnership members ,we came to conclusion, we can’t afford to accept your proposal. We ,have no that money. But, as you mentioned you love your place, your neighbourhood and feel it as your home, we would like to propose to adjust your rent . And still will be less then market rent in the area.” (*sic*)
- In an email dated June 20, 2022, the Landlord wrote: “As we didn’t conclude to an agreement, since we talked last time, we are going to proceed in a different legal way.” (*sic*)

The Tenant stated that she had taken on some caretaker duties for the previous owner without pay or title. The Tenant stated that she is familiar with all units in the building and have had trades in all of them before. The Tenant stated that after she received the Four Month Notice in July 2022, she offered to work as a caretaker for a small fee. The Tenant confirmed she was told that the position was already filled.

The Tenant stated that the rental unit is a large one-bedroom corner suite with views. The Tenant explained that she and her husband chose to live in separate suites for many years. The Tenant stated that she did not wish to give up her independent and emphasized that it was important for her to maintain her own space.

Counsel for the Landlord, MG, argued that the broad definition of “landlord” under section 1 of the Act would include individuals such as the Landlord and CJ. MG argued that the service issues with respect to the Four Month Notice are not relevant as the Tenant clearly received it. MG submitted that the Landlord and CJ were firm that hey did

not want to perform managerial duties anymore, and have found a couple who offered to perform such duties. MG argued that it is irrelevant if there may be other suites for the caretakers to live in. MG argued that the significance of the amount of rent goes to the economical use of the rental unit for the Landlord's caretakers. MG submitted that the requirements under section 48 of the Act for ending a tenancy of a person employed as a caretaker means that the Landlord will not be able to terminate the caretakers to make the suite available for rent.

Counsel for the Tenant, KS, argued that the eviction should not be upheld for procedural reasons, as the Tenant did not consent to being served via email. KS argued that the Four Month Notice was invalid because it named the Landlord rather than 1289671 BC. Ltd. KS argued that in the alternative, the Four Month Notice was issued in bad faith. KS submitted that there was a lack of good faith to renovate or convert the rental unit. KS noted that the Landlord and CJ did not install the door between the two units as they had represented in the previous dispute resolution proceeding, and had re-rented one of the two units. KS submitted that the proposed caretakers could stay where they are instead of kicking out a long-term tenant who pays the lowest rent in the building. KS argued that it did not make sense for the rental unit, which has a view, to be made into a caretaker suite. KS argued that if live-in caretakers were needed, they could have moved into another unit became available in October 2022 due to the tenants moving out. KS argued that there is a pattern of attempting to evict the Tenant for more rent.

### Analysis

#### *1. Is the Tenant entitled to cancel the Four Month Notice?*

Pursuant to section 49(6)(e) of the Act, a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Section 49(7) of the Act requires the notice given by the landlord under section 49(6)(e) to comply with section 52 of the Act, 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.

I have reviewed the Four Month Notice and find that it complies with the requirements of section 52 in form and content. I do not find the naming of the Landlord on the Four Month Notice rather than 1289671 BC. Ltd. to affect the validity of this notice. The definition of "landlord" in section 1 of the Act not only includes the owner of the rental unit, but also "the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement". I accept that the Landlord falls into this class of persons and may be named as a landlord for the purposes of the Four Month Notice and this application. The narrower definition of "landlord" in section 49(1) of the Act does not apply to section 49(6). I note that in any event, I am prepared to find it would be reasonable to amend the Four Month Notice pursuant to section 68(1) of the Act. I find it was well-known by the Tenant that 1289671 BC. Ltd. is the owner of the property and that the Landlord is acting on behalf of 1289671 BC. Ltd. However, I do not find such an amendment to be necessary in the circumstances. I conclude the Four Month Notice should not be set aside for any deficiencies relating to form and content.

I find the Tenant received a copy of the Four Month Notice on July 29, 2022 via email. I accept that the Tenant had not provided her email address as an address for service in accordance with section 43 of the regulations. However, I find nothing turns on this service issue because the Tenant was able to submit this application to dispute the Four Month Notice. Therefore, I find the Tenant was sufficiently served with the Four Month Notice on July 29, 2022, pursuant to sections 71(2)(b) and (c) of the Act.

Section 49(8)(b) of the Act permits a tenant to dispute a four month notice to end tenancy for conversion of a rental unit within 30 days of receiving such notice. In this case, the 30-day deadline fell on Sunday, August 28, 2022. Records of the Residential Tenancy Branch indicate that the Tenant submitted this application on Monday, August 29, 2022.

According to the definition of “days” in the Residential Tenancy Branch Rules of Procedure:

- a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday the time is extended to the next day that is not a holiday.
- b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.”

Therefore, I find the 30-day deadline for the Tenant to dispute the Four Month Notice was extended from Sunday, August 28, 2022 to Monday, August 29, 2022. I find the Tenant made this application within the time limit required under section 49(8)(b) 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. The landlord is also required to demonstrate good faith in issuing the notice.

I find the Landlord’s evidence is that no renovations or only minor renovations will be done as part of converting the rental unit into a caretaker suite, such that no permits or approvals will be needed. I do not find section 49(6)(e) of the Act to require renovations as part of converting a rental unit to a caretaker suite. Therefore, the key issue to be determined here is whether the Landlord had issued the Four Month Notice in “good faith”.

Residential Tenancy Policy Guideline 2B. Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use explains “good faith” as follows:

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 are not trying 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 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 (section 32(1) of the RTA).

(emphasis underlined)

In this case, I find the Landlord did not issue the Four Month Notice in good faith, due to an ulterior motive to generate more rental income from the rental unit.

First, I do not accept the Landlord's claim that she and CJ decided to hire caretakers because they wanted to spend more time with their grandchildren. I find there is insufficient evidence to show that the proposed caretakers have begun helping the Landlord and CJ in any capacity since the Four Month Notice was issued in July 2022. Indeed, I find there is still no firm agreement in place with TM and SM. I find the Landlord's proposed hiring of TM and SM as caretakers is contingent on TM and SM being able to move into the rental unit and pay market rent for that suite. I find the Landlord has not explained why it would be necessary to wait for TM and SM to move in if the goal is to help free up the Landlord and CJ's time. Furthermore, I find the proposed caretakers already live in the same neighbourhood as the rental property. I also find the Landlord did not provide any compelling reasons to explain why TM and SM could not have moved into the unit that became available in or around October 2022, and start working right away.

Second, I find it is not disputed that the Tenant pays the lowest rent in the building. I find the Landlord was already unsuccessful once in attempting to evict the Tenant for the Landlord's son to move in due to lack of good faith. I find that based on the email correspondence submitted into evidence by the Tenant, the below-market rent paid by the Tenant is still very much an issue between the parties. I find the Landlord acknowledged that the proposed caretakers moving into the rental unit on her preferred terms would result in an effective rent increase of \$600.00 for the rental unit.

Under these circumstances, I find that generating more rent was a driving factor and hence an ulterior motive for ending this tenancy under the Four Month Notice.

As such, I am unable to conclude that the Landlord had issued the Four Month Notice in good faith. I order that the Four Month Notice be cancelled and of no force or effect.

*2. Is the Tenant entitled to reimbursement of the filing fee?*

As the Four Month Notice has been set aside on this application, I award the Tenant reimbursement of her filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Tenant to deduct \$100.00 from rent payable for the month of April 2023.

Conclusion

The Four Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

Pursuant to section 72(2)(b) of the Act, the Tenant is authorized to deduct \$100.00 from rent payable for the month of April 2023 on account of the filing fee awarded.

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: March 18, 2023

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Residential Tenancy Branch