



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants, the landlord, the landlord's son/interpreter ("A.G."), and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this Decision.

### Preliminary Issue- Amendment

Tenant T.T. testified that her legal last name is different than the last name listed on this application for dispute resolution. In the hearing tenant T.T. provided the spelling for her legal last name. Pursuant to section 64 of the *Act*, I amend the tenants' application for

dispute resolution to state the tenant's legal name in addition to the last name stated on this application for dispute resolution.

### Preliminary Issue- Service

Tenant D.C. testified that the landlord was served with the tenants' application for dispute resolution via registered mail on October 11, 2022. The agent testified that tenants' application for dispute resolution proceeding package was received on time around November 10, 2022.

I find that the tenants' application for dispute resolution was served on the landlord via registered mail in accordance with section 89 of the *Act*.

Tenant D.C. testified that the tenants' evidence was served on the agent via email on February 20, 2023 and on the landlord via registered mail on February 21, 2023. The agent testified that the registered mail package was received at the end of February 2023. The agent was asked if the landlord had any issue with the timing of service, the agent testified that the landlord took no issue with the timing of service. The landlord testified that he had time to review and respond to the tenant's evidence.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") state that evidence must be received by the respondent and the Residential Tenancy Branch directly not less than 14 days before the hearing.

Pursuant to the *Rules*, when calculating days for service of documents, the day of service and the date of the hearing do not count. I find that even if the landlord received the tenant's evidence on February 20, 2023, the evidence would have been served 13 clear days before this hearing. I find that the landlord received the tenants' evidence late.

When determining whether to exclude or accept evidence for consideration, I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principles of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

As the landlord confirmed receipt of the tenants' application for dispute resolution and testified that he had time to review and respond to the tenants' evidence, I find that the landlord was informed of the case against him and was able to respond to the claims made against him. I also note that agent did not identify any issues with the timing of service or dispute consideration of the tenants' evidence. Pursuant to the above, I accept the tenants' evidence package into evidence and find that the landlord was served with the tenants' evidence package in accordance with section 88 of the *Act*.

The agent testified that the landlord's evidence was posted on the tenants' door on February 24, 2023. Tenant D.C. testified that the tenants received the landlord's evidence on or about February 24, 2023. I find that the landlord's evidence was served on the tenants in accordance with section 88 of the *Act* and in accordance within the timelines for service set out in section 3.15 of the *Rules*.

#### Issues to be Decided

1. Are the tenants entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

#### Background and Evidence

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

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states:

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Evidence that was not presented in the hearing may not be considered in this decision.

Both parties agreed to the following facts. This tenancy began on September 1, 2014 and is currently ongoing. Monthly rent in the amount of \$765.00 is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenants to the landlord.

The agent testified that the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") via registered mail on October 21, 2022. A registered mail customer receipt for the above mailing was entered into evidence. Tenant D.C. testified that he received the Notice but could not recall on what date.

The Notice was entered into evidence, is signed by the agent, is dated October 21, 2022, gives the address of the rental unit, states that the effect date of the notice is December 31, 2022, is in the approved form, #RTB-32, and states the following ground for ending the 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 close family member will occupy the unit.
    - The child of the landlord or landlord's spouse.

A.G. testified that the subject rental house consists of the main portion of the house, occupied by the landlord, and two basement suites, one of which is the subject rental property. A.G. testified that he intends on moving into the subject rental property and his grandparents plan on moving into the other basement suite.

A.G. testified that he wants space for himself and wants his own place, that being the subject rental property. A.G. testified that he is currently a student at the Okanagan campus of the University of British Columbia but would like to transfer to the Vancouver campus and live in the subject rental property.

A.G. testified that his classes are currently a mixture of in person and on-line classes. A.G. testified that he is not sure when his current term ends but believes it is near the end of April 2023. A.G. testified that he could move into the subject rental property by April 28, 2023. A.G. testified that he has not submitted transfer paperwork to his university yet because he does not know if he will have somewhere to live.

Tenant D.C. testified that landlord has been trying to evict him for years. Tenant D.C. testified that when the landlord first purchased the subject rental property he served the tenant and the other basement suite with notices to end tenancy, but when the landlord learned that the person moving in had to be a close family member, the landlord backtracked.

Tenant D.C. testified that after COVID the landlord tried to raise the rent above the legal amount and to evict for renovations but when the landlord learned of the requirements for ending the tenancy for renovation, the landlord back peddled. The tenant entered into evidence the following text messages dated January 31, 2022:

- Landlord:
  - Hello [tenant D.C.], I wanted to let you know about a rent increase that we're coming forth with starting March 2022, \$900 per month.
- Tenant D.C.:
  - Oh hell no.
  - 3 months written notice and only 3% increase
  - Sorry [landlord] that is the law
  - Sorry it is 1.5 percent as per the government website
- Landlord:
  - We're concluding to do renovations in the summer, around May. Gives you about a 3 month notice for eviction.
- Tenant D.C.:
  - Seriously you can't do that
  - [Landlord] I know my rights as a tenant
  - I have no problem with an increase but there is no way a 150 is fair
- Landlord:
  - Okay, renovations off the table. Just the rent increase then 3 months from tomorrow's date
  - Sorry for the confusion, 1.5% as said by the BC website

Tenant D.C. testified that in March of 2022 the landlord raised the rent the permitted amount for that year. Tenant D.C. testified that in October of 2022 the landlord asked for another rent increase over the amount permitted and that the landlord served the tenant with the Notice two days after the tenant refused to pay it. Tenant D.C. asked the landlord if the Notice would have been served if the tenant agreed to the October 2022 rent increase. The landlord testified that the Notice still would have been served if the tenant agreed to the rent increase. Tenant D.C. questioned why the landlord would request a rent increase two days before serving the Notice.

## Analysis

Based on the Notice entered into evidence and the testimony of both parties, I find that the tenants were deemed served with the Notice on October 26, 2022, in accordance with section 88 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

Residential Tenancy Policy Guideline 2A explains the 'good faith' requirement 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 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)).

....

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 tenants' testimony in the hearing clearly raised the issue of a dishonest motive or purpose for ending the tenancy. As such the onus is on the landlord to establish the Notice was issued in good faith.

Based on the testimony of both parties, I find that the landlord requested a rent increase over and above that permitted under the *Act*, two days before the Notice was served on the tenant. The landlord testified that even if the tenants agreed to the rent increase, the landlord would still have served the Notice, two days later, on the tenants. I do not find the landlord's testimony to be believable in the circumstances. I find it highly unlikely that the landlord would pursue a rent increase if the landlord planned on having a close family member move into the subject rental property in the near future. I find it more likely than not, that the Notice was served on the tenants as a consequence of the tenants' refusal to pay a rent increase over and above that provided for in the *Act*.

I find that while A.G. may genuinely want to move into the subject rental property, the landlord had a dishonest motive in serving the Notice. As stated in *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827, good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy.

As I have determined that the landlord had a dishonest motive in serving the tenants with the Notice, I find that the landlord is not entitled to an Order of Possession and the Notice is cancelled and of no force or effect.

As the tenants were successful in their application for dispute resolution, I find that the tenants are entitled to recover the \$100.00 filing fee from the landlord.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenants are entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

### Conclusion

The Notice is cancelled and of no force or effect.

The tenants are entitled to deduct \$100.00 from rent on one occasion.

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 06, 2023

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Residential Tenancy Branch