



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL-4M, OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 4 Month Notice to End Tenancy for Conversion of a Rental Unit dated October 30, 2022 (4 Month Notice), for an order directing the landlord to comply with the Act, Regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant, a tenant advocate, LZ (advocate), and the spouse of the landlord, AT (agent) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. Both parties did not have any witnesses to present at the hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings are described in this decision.

Neither party raised any concerns regarding the service or receipt of documentary evidence. I find the parties were sufficiently served as required by the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

The parties in attendance confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to both parties.

As GT was the only listed landlord on the tenancy agreement, the application was amended pursuant to section 64(3)(c) of the Act to reflect the name of the sole landlord on the tenancy agreement.

### Issues to be Decided

- Should the 4 Month Notice be cancelled?
- If yes, should the filing fee be granted?
- If no, should an order of possession be granted?
- Is there sufficient evidence to order the landlord to comply with the Act, Regulation or tenancy agreement?
- What should happen to the filing fee under the Act?

### Background and Evidence

The parties agreed that the landlord served the 4 Month Notice on October 30, 2022 and it is dated the same date. The tenant disputed the 4 Month Notice on the same date, October 30, 2022, which is within the 30-day timeline provided for under section 49(8)(b) of the Act.

The reason listed on 4 Month Notice reads as follows:

ending your tenancy because I am going to: (check a box that applies)

☐ Demolish the rental unit.

☐ Convert the residential property to strata lots under the Strata Property Act.

☐ Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act.

☒ Convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

☐ Convert the rental unit to a non-residential use.

☐ I have obtained all permits and approvals required by law to do this work. Please complete the information below.

Date Issued DD/MM/YYYY	Issued by	Description	Permit Number

☒ No permits and approvals are required by law to do this work.

The work I am planning to do is detailed in the table below:

Planned Work	Details of work
	PLANNING ON MOVING A BUILDING CARETAKER INTO THIS UNIT #102. IT IS ON THE MAIN FLOOR SO IT IS SUITABLE FOR MY NEW CARETAKER.

The agent confirmed that no caretaker has been hired and there was no posting for a caretaker position submitted in evidence for my consideration. Although the tenant claims that a person who lives in unit 301 has been assisting the landlord, the agent

claims the tenant from unit 301 is just a “helper” (Helper) and works full-time and as a result is not a caretaker and has no plans to be the caretaker.

The agent testified that the unit in question is ideal for a caretaker for the following reasons:

1. It is on the main floor of the building, which has 3 floors and a total of 15 units.
2. It is in the middle of the floor so an equal distance between the front and back doors of the building and faces outside for a security benefit.
3. It is next to the boiler room, laundry room and close to the storage room for ease of access.
4. It is easier to install wifi so that the current cameras can be hooked up to the wifi.
5. It will allow the security system screen to be somewhere private where the caretaker can monitor the cameras on the screen.

The agent testified that the building is 60 years old and her husband is 56 years-old and is getting older and needs help due to physical injuries

The agent writes in their evidence in part as follows:

**Management**

8.       Myself (Amy) and my husband (George) manage the Property by ourselves. George is responsible for day to day operations, including landscaping and yard maintenance, snow shoveling and plowing and laundry machines. Amy is responsible for rent collection, and renting out units when they become vacant. We also respond to requests for emergency, after hours repairs and attend at the property to do the repairs myself(george) or with the assistance of a tradespeople.

Exhibit B is most recent Injury George had

**Hiring a Caretaker**

10.       Amy will put an ad out to hire a caretaker once the Unit has been cleared to be a caretakers Unit, and Amy will interview accordingly.

The landlord submitted three pictures showing the rooms near the rental unit and the outside view area next to the rental building where the agent states that having a better view will prevent people from using that area to dispose of garbage and mattresses. The medical note submitted by the agent is dated January 30, 2023 and indicates that the landlord had a “triceps repair” and is signed by a doctor from Lions Gate Hospital.

The landlord and agent also signed the following Affidavit dated February 15, 2023. All personal information has been redacted to protect privacy:

February 15, 2023

My legal name is Artemisia (Amy) [REDACTED], my husband's name is George [REDACTED] we are the owners of a building located at [REDACTED] New Westminster. This promise is that we are giving Maria K [REDACTED] of unit [REDACTED] 1st New Westminster a four month to end tenancy with a paid month to move out of this unit for a new building caretaker that we will be interviewing and finding the right fit for our building. Maria was served this notice to end tenancy on October 30, 2022. I have given Maria over the expected period to move out which is four months but instead gave Maria until May 1, 2023 a total of 7 months. The caretaker will not be the old buildings helper Duane [REDACTED] of unit [REDACTED] Duane was always just a helper for George. George is getting older and has had a few bad accidents which has made him incompetent to do some jobs that are required at the building. For that reason we have decided that unit 102 is the most suitable unit for this job. It is close to the front and back door and across from the boiler room, storage room and laundry room, where we will be placing internet access for the building's cameras. The caretaker needs to be on the 1st floor and across the storage room, boiler room and laundry room. This decision is being done under good faith, to keep the building running and maintained properly.

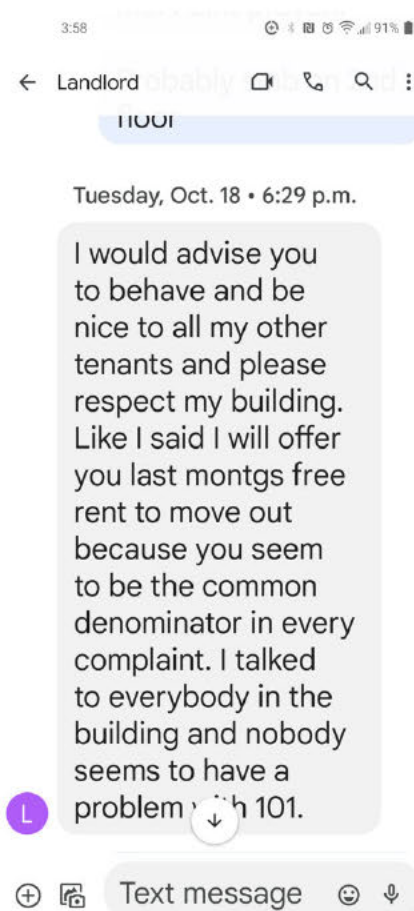
SIGNED AND DECLARED before me at the  
City of Burnaby  
in the Province of British Columbia, Canada,  
this 15th day of  
February, 2023.  
A Notary Public in and for the Province of  
British Columbia

AMY [REDACTED]

GEORGE [REDACTED]

The tenant's response to the evidence presented is that 2 units became available less than a month before the 4 Month Notice was issued, a 3-bedroom unit on the main floor in September 2022 and on the second floor in September 2022. The tenant provided a video in evidence, which supports that the tenant in the second-floor unit moved into the second-floor unit in December 2022.

The tenant testified that whenever they complain about something, they are met with "you should move out" as the landlord's response. The tenant provided a screenshot of an October 18, 2022 text message which has been included below and which the tenant states confirms the landlord has previously offered the last month of rent for free if the tenant will move out:



In addition, the tenant provided a copy of the following email below dated October 18, 2022, which was only 12 days before the 4 Month Notice was issued on October 30, 2022:

**From:** georget [redacted] <georget[redacted]@gmail.com>  
**Sent:** October 18, 2022 6:37 AM  
**To:** Maria K <[redacted]@hotmail.com>  
**Subject:** RE: extreme noise concerns

Good morning Maria. This building is obviously not gonna work for you. Maybe you need to move to a more of a non multi family unit. I will offer you last month's rent free to move.  
 People in 101 are nice people they just happened to move so they are having family coming by. I will also not restrict my tenants to anything until 10pm. We have not filed the complaints that tenants have had but we recorded them and we could bring them to the police. You need to stop trying to patrol or control my property and building.  
 I do not wanna hear about these matters anymore and I also do not wanna hear of you verbally abusing my other tenants. This is a shared building. Please share everything respectfully

Sent from my Galaxy

[personal information redacted to protect privacy]

The agent clarified that their husband takes care of the building whereas the agent deals with rent and the “back end.” The agent stated that the landlord has the right to choose what unit works the best for a caretaker and has given several reasons why.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Firstly, I find the tenant filed their application on time to dispute the 4 Month Notice as indicated above. When a tenant disputes a 4 Month Notice on time, the onus of proof reverts to the landlord to prove that the 4 Month Notice is valid and should be upheld. If the landlord fails to prove the 4 Month Notice is valid, the 4 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 4 Month Notice and calls into question the “good faith” requirement, the onus lies on the landlord to prove that the 4 Month Notice was issued with an **honest intention, with no ulterior motive to end the tenancy**. In the matter before me, the tenant writes in their documentary evidence alleging that the landlord is not acting in good faith.

Given the above, I have considered Residential Tenancy Branch (RTB) Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental unit to a Permitted Use (Policy Guideline 2B) describes “Good Faith” as follows:

### **GOOD FAITH**

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).

In some circumstances where a landlord is seeking to change the use of a rental property, a goal of avoiding new and significant costs will not result in a finding of bad faith: *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371.

If a landlord applies for an order to end a tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent without carrying out renovations or repairs that require the vacancy of the unit, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past for renovations or repairs without carrying out renovations or repairs that required vacancy, this may demonstrate the landlord is not acting in good faith in a present case.

[emphasis added]

I have carefully considered all of the evidence before me and I find that by the landlord failing to have already hired or placed an ad to hire a caretaker, and given the text and email message described above on October 18, 2022, that the landlord has an ulterior motive for evicting the tenant on the 4 Month Notice. As clearly indicated above, 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.

Based on the email and text being just 13 days before issuing the 4 Month Notice and due to the lack of a caretaker ad or proof that a caretaker has been hired and requires accommodation in the rental building as part of a caretaker employment contract, I find the landlord has issued the 4 Month Notice with an ulterior motive. Therefore, **I cancel** the 4 Month Notice dated October 30, 2022. The 4 Month Notice is of no force or effect as a result.

Pursuant to section 62(3) of the Act I make the following order:

**I ORDER** the tenancy to continue until ended in accordance with the Act.

I also order the landlord not to issue a notice to end tenancy with an ulterior motive in the future.

As the tenant's application was successful, I grant the tenant a one-time rent reduction in the amount of **\$100** in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the Act.

Conclusion

The tenant's application is successful.

The 4 Month Notice is cancelled due to an ulterior motive.

The tenancy shall continue until ended in accordance with the *Act*.

The tenant is granted a one-time rent reduction in the amount of \$100 in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 15, 2023

---

Residential Tenancy Branch