



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      CNL, FFT

### **Introduction**

This hearing dealt with a tenant's application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice").

Both the landlord and the tenant appeared for the hearing. The tenant was assisted by an Advocate and the landlord appeared along with his daughter. The parties were affirmed.

I heard that both parties exchanged their respective hearing materials with each other via email. Neither party objected to being served by email. Accordingly, I deemed the parties sufficiently served pursuant to the authority afforded me under section 71 of the Act and I admitted the materials of both parties.

The hearing process was explained to the parties and the parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### **Issue(s) to be Decided**

1. Should the Two Month Notice be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Award of the filing fee.

### **Background and Evidence**

The tenancy started on October 6, 2019. The tenant is required to pay rent of \$1600.00 on the first day of every month.

On November 27, 2022 the landlord issued the subject Two Month Notice and it was served via email and stuck in the door frame of the rental unit door on that same date. Although not proper service, the tenant acknowledged receiving the Two Month Notice and did not take issue with respect to the method of service. The tenant also filed to dispute the Two Month Notice within the time limit for doing so. As such, I deemed the tenant sufficiently served with the Two Month Notice pursuant to the authority afforded me under section 71 of the Act. However, during the hearing, I suggested the landlord familiarize himself with the service provisions of the Act and to serve the tenant in a manner that complies with the service provisions in the future.

The Two Month Notice has a stated effective date of January 31, 2023 and indicates the reason for ending the tenancy is that the landlord's child will occupy the rental unit.

The landlord's daughter who appeared at the hearing stated that she intends to occupy the rental unit. The landlord's daughter gave two reasons for wanting to move into the rental unit:

1. Mental health reasons

Since the start of the Covid-19 pandemic the landlord's daughter has been working from home, in her bedroom. Starting in early 2022 she started experiencing stress which eventually got worse. In the summertime of 2022 she went to the doctor for this issue for the first time and she took a couple of weeks off work in September 2022. The tenant also started counselling sessions. In the fall of 2022, she began working one day per week in the office but that has not been enough to relieve her stress from working in her bedroom most of the time. Occupying the rental unit will afford the landlord's daughter sufficient space to separate her bedroom from her working location. The landlord provided a doctor's note as evidence.

2. Upcoming marriage

The landlord's daughter is getting married but her future husband's family home is not suitable for them to live at after they are married so they will reside in the rental unit together after they are married. The landlord's daughter pointed to a receipt showing the reservation of a venue for the marriage ceremony. I noted the wedding date was obstructed. The landlord's daughter acknowledged she did this as she does not want the tenant to know her wedding date. I asked the landlord's daughter when she got engaged. The landlord's daughter explained that they have yet to have their formal engagement party but, as is customary in their culture, both of their families are in agreement that they are to be married.

The tenant's Advocate argued the Two Month Notice was issued in retaliation for being unsuccessful in ending based on a One Month Notice to End Tenancy for Cause that was issued on June 5, 2022. The tenant provided a copy of the previous dispute resolution proceeding decision as evidence. The hearing was held on October 31, 2022 and the decision was issued on November 1, 2022 (file number provide on the cover page of this decision). Only 26 days later the Two Month Notice was issued.

The tenant's Advocate also pointed out that there are two basement suites in the house for the landlord's daughter to chose from.

The landlord's daughter responded that between June 5, 2022 and the October 31, 2022 hearing her stress had worsened. The landlord attempted to introduce evidence concerning the daughter's stress but the Arbitrator did not permit it since it was not related to the One Month Notice.

The landlord's daughter acknowledged there are two basement suites in the house but the rental unit was chosen as it is more private, which will be important once the landlord's daughter is married, and it has two bedrooms so that there is separate bedroom for sleeping and a separate bedroom that can be used for working. Whereas the other basement suite has only one bedroom.

The landlord also noted that the other basement suite tenant has never been late with rent and has not given the landlord any issues.

The tenant's Advocate argued that it is clear the landlord wants to end the tenancy due to issues, including late rent payments, but because the landlord was unsuccessful in ending the tenancy for these reasons with the One Month Notice the landlord is attempting to end it with a Two Month Notice.

### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason indicated on the notice.

The reason for ending the tenancy, as indicated on the Two Month Notice, is consistent with section 49(3) of the Act which permits a landlord to end a tenancy where:

(3)A landlord who is an individual 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

[My emphasis added]

In this case, the landlord has put forth that his daughter intends to occupy the rental unit. A child of the owner meets the definition of a “close family member” under section 49 of the Act.

The tenant called the landlord’s good faith intention into question, pointing to a previous attempt to end the tenancy that was unsuccessful.

Residential Tenancy Policy Guideline 2A provides information and policy statements with respect to ending a tenancy for landlord’s use of property. Under the heading “Good Faith”, the policy guideline provides:

#### **B. 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 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 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 demonstrate 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.

[My emphasis added]

It is before me to determine whether the landlord has demonstrate that he had only a good faith intention to end the tenancy when the subject Two Month Notice was issued, on November 27, 2022.

The landlord's daughter described two reasons why she wants to occupy the rental unit, which I proceed to analyze further, as seen below.

### **Additional space for mental health reasons**

The landlord's daughter submitted that she has been suffering from stress that she attributes to working from her bedroom and that the additional space the rental unit would provide her would be helpful in reducing her stress.

During the hearing, the landlord stated that he attempted to raise his daughter's mental health as a reason for ending the tenancy during the previous dispute but that the Arbitrator would not hear it. However, I find that submission to be inaccurate upon review of the decision issued by that Arbitrator. I note that in a number of places in the decision, the stress, anxiety and mental health of the landlord's daughter was described, responded to by the tenant, and analyzed by the Arbitrator as seen in the following excerpts of the decision.

On page 2 of the previous dispute resolution proceeding is the following paragraph:

The Landlord further stated that they issued this Notice because of "multiple things adding up". The Landlord stated that they issued this Notice because of their concern over his daughter's mental health, as she has gotten in arguments with the Tenant's daughter. The Landlord stated that the Tenant's daughter, who is not supposed to be living in the rental unit, has been aggressive and threatening, which is causing their family stress.

On page 3 of the previous dispute resolution proceeding is the following paragraph:

The Tenant stated that her daughter has not been threatening or aggressive with the Landlord or his daughter, as they assert. The Tenant stated that her daughter had a disagreement with the Landlord's daughter over putting more salt on the walkway.

On page 5 of the previous dispute resolution proceeding is the following paragraph:

The Landlord also asserted that his daughter has been disturbed and affected by the negative interactions she has had with the Tenant's daughter. The Landlord also generally referred to the fact that the Tenant's daughter has argued with him, as well. The Landlord asserts that his daughter has to wait in her car to avoid the Tenant's daughter at times, and she also has suffered stress and anxiety as a result of her conflict with the Tenant's daughter. The Tenant denies that her daughter was threatening or aggressive, and suggested that there was a disagreement between her daughter and the Landlord's daughter regarding putting more salt onto the walkway for safety. Ultimately, I found the Landlord's statements on this matter were not sufficiently clear or detailed, and there is a lack of corroborating evidence. I find the Landlord failed to sufficiently demonstrate that he or his daughter have been significantly interfered with, or unreasonably disturbed, based on any of the issues presented.

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It is evident to me that during the October 31, 2022 hearing, the stress, anxiety and mental health of the landlord's daughter was raised and attributed to negative interactions with the tenant's daughter. The Arbitrator heard the issue and ultimately decided that there was insufficient evidence to support the position. Now, it seems the mental health of the landlord's daughter is being raised again for this proceeding but the landlord is putting forth a different reason for the stress. Accordingly, I proceed to analyse the evidence before me to determine whether I am satisfied the Two Month Notice was issued, in good faith, to deal with the purported stress of the landlord's daughter attributed to her working location within the residential property.

The landlord's daughter testified that starting in the summer of 2022 her stress and anxiety from having to work in her bedroom was such that she started seeing a counsellor and took time off work in September 2022 in an effort to improve her mental health. In support of this reason, I was provided a doctor's note.

The doctor's note has two different dates in two different places: January 4, 2023 and January 6, 2023.

The doctor's note is on a form provides for reasons for issuance of the note, as follows (with name of landlord's daughter omitted by me for privacy purposes):

To whom it may concern,

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**This is to certify that:** [REDACTED]

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- ☐ States that he/she was unable to work for medical reasons on dates indicated below.
- ☐ Was unable to work for medical reasons on dates indicated below:
- ☐ Was seen in my office today for medical reasons.
- ☐ May return to work.
- ☐ May return to suitable work with the following restrictions.
- ☐ Absent due to illness in the family.
- ☐ No gym or sports for medical reasons for dates indicated below:
- ☐ Was unable to attend school for medical reasons on dates indicated below:
- ☐ Was unfit to travel due to medical reasons on date(s) indicated below:

None of the boxes are ticked, but in the remarks section of the note it states (with name of landlord's daughter omitted by me for privacy purposes):

**REMARKS**

I spoke to [REDACTED] today, she reports having anxiety and stress related to work. She works 5 days a week, 8 hours a day. She works 4 days a week from home. She reports that she is working from her room, which is making her feel that her room is a negative space. She is hoping to move to the basement to have more space. She feels that moving into the basement away from upstairs will help settle the anxiety. She has started counselling to manage the anxiety / stress at work.

If the landlord's daughter started seeing a counsellor in the summertime of 2022 and took time off work due to mental health issues in September 2022, as she claims, I am of the view there would be documentary evidence that could be obtained and provided to substantiate those time lines, such as a receipt from the counsellor and documentation from her employer. It appears to me that obtaining the doctor's note in January 2023



was obtained for purposes of this hearing since the doctor's note was not issued for any other available reason that is provided on the form, such as for employment purposes. The doctor's note does not indicate when the mental health issues commenced or when the patient had commenced counselling, if in fact she has. Rather, it appears to be written based on what the landlord's daughter told to him that day.

Given the landlord and his daughter have been putting forth changing reasons for the stress and anxiety of the landlord's daughter at different hearings, the lack of corroborating evidence to show if and when the landlord's daughter started counselling and took time off work due to stress, and a doctor's note that was prepared after the tenant filed to dispute the Two Month Notice and prepared solely on the oral statements of the landlord's daughter to the doctor, I find I am unsatisfied the Two Month Notice was issued, in good faith, for the reason put forth to me during the hearing.

### **Upcoming marriage of landlord's daughter**

The landlord's daughter testified that she wants to occupy a separate living unit from her parents living unit due so that she and her husband may have privacy once they are married. In support of this reason, the landlord submitted a receipt to demonstrate a deposit was placed on February 5, 2023 to secure a venue for a wedding ceremony. However, the wedding date is obscured and when I pointed this out during the hearing the landlord's daughter still did not reveal her wedding date. The landlord's daughter also testified that she and her fiancé have yet to even have their engagement ceremony, which precedes the wedding ceremony. Rather, the landlord's daughter testified that she and her fiancé have obtained permission or agreement to marry from their respective families, but the date this permission or agreement was given was not disclosed either. As such, I find the issuance of the 2 Month Notice on November 27, 2022 is likely premature considering the engagement ceremony has not even taken place as of the date of this hearing and the wedding date follows that on an undisclosed date. Therefore, I am unsatisfied that the anticipated marriage of the landlord's daughter was a good faith reason for issuance of the Two Month Notice on November 27, 2022.

In light of all of the above, I grant the tenant's application and I cancel the Two Month Notice and the tenancy continues at this time.

Since the tenant was successful in this application, I award the tenant recovery of the \$100.00 filing fee that she paid for this application. The tenant is authorized to deduct



\$100.00 from a subsequent month's rent in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.

Conclusion

The Two Month Notice is cancelled and the tenancy continues at this time.

The tenant is authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.

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 22, 2023

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Residential Tenancy Branch