



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNL, LRE, OLC, FFT**

### **Introduction**

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

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act;
2. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, her Assistant and Agent, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

Both parties acknowledged receipt of:

- the Landlord's Two Month Notice personally served on January 27, 2023, the Tenant confirmed receipt, served on January 27, 2023;

- the Tenant's Notice of Dispute Resolution Proceeding package personally served on February 17, 2023, the Landlord confirmed receipt, served on February 17, 2023;
- the Landlord's evidence package personally served on February 27, 2023, the Tenant confirmed receipt, served on February 27, 2023.

Pursuant to Sections 88 and 89 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Preliminary Matter

#### *Unrelated Claims*

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the Two Month Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant's request to cancel the Two Month Notice and the claim for recovery of the application filing fee at this proceeding. The Tenant's other claims are dismissed.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties testified that this periodic oral tenancy began on September 1, 2108. Monthly rent is \$1,400.00. A security deposit of \$400.00, and a pet damage deposit of \$300.00 were collected at the start of the tenancy and are still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice is April 1, 2023.

The Landlord testified that she is living in an RV on a friend's property. When the weather gets colder the Landlord moves into her friend's house. The Landlord wants to move back into her own house. The Landlord stated that she has three daughters who are 28, 31 and 32 years old. As some circumstances have changed, she wants to move into her house so that she has the freedom to take them in when life circumstances are difficult for them. Lately, they have had a lot of ups and downs.

The Landlord seeks an Order of Possession. She stated she needs more room.

The Tenant stated she does not believe the Landlord will be moving into the rental unit. She stated she was told by the Landlord's friend that the Landlord cannot afford the property taxes, so she does not believe the Landlord plans to move into the rental unit. The Tenant seeks to cancel the Two Month Notice.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49 of the Act is the relevant part of the legislation in this application. It states:

#### ***Landlord's notice: landlord's use of property***

**49**

...  
(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.*

...  
(7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] ...*

(8) *A tenant may dispute*

- (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*

...

The Tenant was personally served with the Two Month Notice on January 27, 2023. I find that the Two Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on February 10, 2023 which was within the 15 days after receiving the Two Month Notice.

The Tenant made a claim that she did not believe the Landlord was acting in good faith. RTB Policy Guideline #2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties to understand issues that are likely to be relevant in this regard.

## **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.*

*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. 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.*

The Landlord lives in an RV on her friend's property. The Landlord stated she needs more room to house her family if they need it. She wants to take back her house so she

will have the freedom to take her children in if the need arises. The Tenant does not believe that the Landlord will be moving into the rental unit as it is her belief that the Landlord cannot afford the property taxes for the home. I find the Landlord's testimony about needing more room to assist her family are probabilities that certainly are more likely than not. The Landlord's home can help her and her family if they need it. I find the Landlord intends to reside in her home and has proven, on a balance probabilities, grounds to end this tenancy. I uphold her Two Month Notice.

As the Tenant was not successful in her application, I must now consider if the Landlord is entitled to an Order of Possession.

Section 55(1) of the Act reads as follows:

***Order of possession for the landlord***

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I previously found that the Two Month Notice submitted into documentary evidence complies with Section 52 of the Act and I upheld the Landlord's Two Month Notice. I grant an Order of Possession to the Landlord which will be effective on March 31, 2023 at 1:00 p.m.

As I uphold the Landlord's Two Month Notice, I caution the Landlord to regard Section 51 of the Act regarding: ***Tenant's compensation***, which comes into play when the Landlord does not fulfil the stated purpose in their notice.

Finally, as the Tenant was unsuccessful in her claim, she is not entitled to recovery of the application filing fee.

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession pursuant to Section 55(1) of the Act, which will be effective on March 31, 2023 at 1:00 p.m. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 10, 2023

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Residential Tenancy Branch