



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

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

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. The landlord acknowledged receipt of the tenants' application and evidence submissions on file. The tenant acknowledged receipt of the landlord's evidence submissions in response but argued it was not received on time as it was posted to their door on March 23, 2023. The tenant argued that since it was posted to the door it shouldn't be deemed received for three days after the date it was served. However, the tenant acknowledged he collected the evidence package the next day on March 24, 2023. I find the tenant is deemed to have received the evidence on the date he actually received it on March 24, 2023 which is seven days before the hearing date as required. The landlord's evidence submissions were therefore permitted. Additionally, the tenant confirmed that he had ample opportunity to review the landlord's submissions.

### **Preliminary Issue – Scope of Application**

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application

with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee?

### Background & Evidence

The rental unit ("unit #4") is one of four units in a fourplex building located on the landlord's apple orchard. This particular unit is a two-bedroom unit with one washroom and a living area. The tenancy began for this unit began on January 1, 2021. The monthly rent is \$1100.00. Unit #1 and unit #2 are occupied by other tenants one of which is the tenant C.J.'s father. Unit #3 is currently empty and in the past has been used to house farmworkers on the property. The landlord also resides on the same property in a separate house. In or around November 2022, the tenants also rented unit #3 as they required additional space for their family and home-based business. The tenants have since vacated unit #3. No written tenancy agreement exists for either unit.

The landlord served the tenants with a Two Month Notice on February 26, 2023. The Two Month Notice has an effective date of April 30, 2023. The notice was issued on the ground that the landlord intends for his daughter to occupy the rental unit.

The landlord testified that his daughter J.D. plus her husband and their son moved to Kelowna at the end of January 2023 after her husband who is an RCMP officer got transferred. They spent a month in a hotel and now are residing with the landlord and his family. They have had to store their belongings in storage. Unit #4 has been used by the family for their residence previously as the landlord's other daughter used to reside in it before the tenants moved in.

The landlord's son D.G. submits that unit #3 was only provided to the tenants on a temporary basis to help them out as they needed additional space. This unit is typically reserved for farmworkers and since it was "off-season" they offered it to the tenants. D.G. submits that his family has known the tenant C.J. for a long time as his father resides in unit #2. It was at the request of the tenant's father that they made unit #4 available to the tenant as he was homeless at the time and his father was aware that

the landlord's other daughter had moved out of the unit. The landlord submitted a statement from his daughter J.D. stating her intentions to move into the unit

The tenants are disputing the Two Month Notice on the grounds that it was not issued in good faith. The tenant C.J. submits that he used to live in unit #3 back in 2018 and moved out after a year or two. He moved back into unit #4 in January 2021. The tenant testified that for the past year unit #3 sat empty and no farmworkers were housed in it. The landlord agreed for them to also rent that unit on a temporary basis. When the landlord advised they needed a unit for his daughter they agreed to vacate unit #3 and make it available for the landlord but did not agree to vacate unit #4. The tenant submits that since unit #3 was not used to house farmworkers the previous year and because the landlord has not provided any evidence to support that farmworkers will be housed in it this year, they believe the landlord is not acting in good faith. The tenant questioned why the landlord's daughter cannot reside in unit #3 until farmworkers arrive and then move into unit #4 at that time.

The landlord testified that even when the tenant lived in unit #3 a few years back it was only during the off-season and the reason he moved out at that time was because the landlord needed the unit to house farmworkers. He has not provided any evidence of applications for farmworkers as he usually makes an application in May for the farmworkers to start work in August when the picking season starts. If they require earlier help, some farmworkers arrive in July.

The landlord's son I.G. added that the only reason unit #3 was not used for farmworkers the past season was due to the landlord sponsoring refugees and making the unit available for them.

### Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I find the testimony of the landlord to be credible and find the landlord does have a good faith intention for a family member to occupy the rental unit in question. It was not disputed that this particular unit was previously reserved for the landlord's own use as it was occupied by the landlord's other daughter prior to it being made available to the tenants. I accept that the landlord only made it available to the tenants to help them out as they previously knew the tenant and his father. It was not disputed that the landlord now needs a unit for his daughter whose husband has just been transferred to work in the city. The landlord has the right to choose which of his units he wants to use for his own or family use. I accept the landlord's testimony that unit #3 has been used in the past to house farmworkers and the landlord is reserving that unit for that purpose again this year. I also find the testimony and evidence supports that unit #3 was only made available to the tenants on a temporary basis during the off season. The tenants' suggestion for the landlord's daughter to move into unit #3 until farmworkers are a certainty is not very practical as that would entail the daughter setting up her home temporarily only to have to move again a short time after.

I also note that other than the tenants arguing the landlord could use unit #3 for their own use, the tenants have not provided much evidence which could call the landlord's good faith intent into question. There is no evidence that the landlord was only trying to end the tenancy for another purpose such as increasing the rent or for personal reasons. Rather, the evidence was that this was the second time this landlord made a rental unit available to this same tenant. If the landlord had an ulterior motive such as personal reasons it is not likely that the landlord would have entered into a second tenancy to begin with.

I find that the landlord has provided sufficient evidence to justify that it has a good faith intention for a family member to occupy the rental unit. The tenants' application to

cancel the Two Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this order on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed 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 *Residential Tenancy Act*.

Dated: April 3, 2023

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Residential Tenancy Branch