



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

|                      |           |          |
|----------------------|-----------|----------|
| <u>Dispute Codes</u> | Landlord: | OPL, FFL |
|                      | Tenant:   | CNL      |

### Introduction

This hearing was convened as a result of cross-applications for dispute resolution filed by the parties.

The Landlord's application was made on March 9, 2023. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- An order of possession; and
- An order granting recovery of the filing fee.

The Tenant's application was made on November 30, 2022. The Tenant applied for an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 21, 2022 (the Two Month Notice), pursuant to the Act.

The Landlord attended the hearing and was accompanied by BB, an agent. The Tenant attended the hearing and was accompanied by KC, an advocate. Also in attendance for the Tenant were AR and MD, witnesses. All those giving testimony provided a solemn affirmation at the beginning of the hearing.

During the hearing, BB confirmed that the Tenant was not served with the Notice of Dispute Resolution Proceeding package related to the Landlord's application. Accordingly, I find that the Landlord's application is dismissed without leave to reapply. However, the Tenant did confirm receipt of a documentary evidence package from the Landlord on March 28, 2023.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding package related to the Tenant's application by registered mail. BB acknowledged receipt on behalf of the Landlord.

No further issues were raised with respect to service and receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed. Therefore, I find that the Tenant's Notice of Dispute Resolution Proceeding package and the Landlord's documentary evidence package were sufficiently served for the purposes of the Act, pursuant to section 71 of the Act.

The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure and to which I was referred; however, I refer to only the relevant facts and issues in this Decision.

#### Preliminary Issue – Jurisdiction

At the conclusion of the hearing, KC asked if I would be making a decision with respect to jurisdiction. Although no submissions were made by either party with respect to jurisdiction under the Act (or lack thereof), I find that a tenancy exists between the parties and that I have jurisdiction to consider the matter on that basis. Further, I find that the issue before me – the effectiveness of the Two Month Notice to end the tenancy – falls within the exclusive jurisdiction of the director under section 84.1 of the Act. I also find there is insufficient evidence before me to conclude I do not have jurisdiction on the basis that the matter is substantially linked to a matter that is before the Supreme Court, pursuant to section 58(2) of the Act.

#### Issues

1. Is the Tenant entitled to an order cancelling the Two Month Notice?
2. If not, is the Landlord entitled to an order of possession?

### Background and Evidence

The parties agreed the tenancy began in October 1994, and that the Landlord purchased the rental property in August 2016. The parties agreed the Tenant currently pays rent of \$840.00 per month, which includes the use of a field on the property. The Tenant testified that she paid a security deposit at the beginning of the tenancy but could not recall the amount paid.

The Landlord testified that the Two Month Notice was served on the Tenant by registered mail on November 22, 2022. The Tenant acknowledged receipt on November 26, 2022. The Two Month Notice was issued on the basis that the rental unit will be occupied by the Landlord's mother.

The Landlord testified that he is currently going through a divorce with his spouse, AR. The Landlord testified that he has recently been made the primary caregiver of his three children, ages 13 and 10, and that they live with him the majority of the time. Neither the Tenant nor AR disputed that the Landlord is currently the children's primary caregiver.

The Landlord testified that his mother, JR, will be moving into the rental unit to help him care for the children. In support, the Landlord submitted a signed letter from JR dated December 9, 2022. The letter refers to JR's desire for privacy when she is helping with the children and states: "My son has a house on the property...which I have made plans to occupy in mid February."

KC was given an opportunity to question the Landlord. In response, the Landlord testified that his mother and father currently live in another community but that his mother travels "back and forth" to help with the children. The Landlord testified that his mother and father's home is not currently listed for sale. The Landlord also acknowledged that his father is suffering from Stage 4 colon cancer and that he has a caregiver to assist. In response to KC's suggestion that this matter is before the Court, the Landlord acknowledged that the parties are going through a divorce.

The Tenant challenged the good faith intention of the Landlord. Specifically, the Tenant suggested that the Landlord's mother could use the basement of his home rather than the Tenant's rental unit. The Tenant also testified that the Landlord's mother has only been at the Landlord's home for 47 days in 2023, which was not disputed by the Landlord, and questioned why the Landlord needs to use her rental unit when there are two other units on the rental property that are closer to the Landlord's home.

In response, the Landlord testified that he has completed several renovations of basement of his home since he purchased it and that it is not suitable for his mother. Specifically, the Landlord testified that the basement includes a theatre area and a gym, and that the basement can be noisy with sounds from above. The Landlord also cited his mother's desire for privacy as a reason for providing the Tenant's rental unit to his mother.

The Tenant also called a witness, AR, who was questioned by KC. AR is the spouse of the Landlord. KC indicated there is a no-contact order between AR and the Landlord. Accordingly, the parties were advised that there would be no direct engagement between AR and the Landlord during the hearing but that I would hear the testimony of both. Neither party disagreed with this process.

AR testified that she moved off of the rental property at the end of 2020. AR testified that both she and the Landlord have custody of the children; however, she acknowledged that the children live primarily with the Landlord. AR also testified that assets have not been divided and are not to be "altered" pending a decision of the Court.

Further, AR testified that she did not consent to the Tenant being evicted and believes this to be a change in the status of the marital property that impacts marital assets. AR testified to her belief that the Landlord's intention is to devalue marital assets to disadvantage AR.

AR also testified that the Landlord previously tried to evict the Tenant in 2019 to get more rent. Although not specifically referred to by the Tenant during the hearing, a copy of a decision dated November 18, 2019 was submitted in support. The file numbers related to the previous decision are included above for ease of reference.

AR also testified that her own mother stayed in the Landlord's home during Covid to help with the children and suggested that the basement is sufficient for the Landlord's mother.

In response to the testimony of AR, the Landlord repeated that he is the primary caregiver of the children. He testified that the children reside with AR for three days each month and that they live with him for the rest of the month. The Landlord also denied he is trying to devalue to marital assets.

The Landlord also testified that he was previously paying a nanny \$2,000.00 per month but that the arrangement ended due to lack of privacy in the basement. The Landlord testified that he needs help with the children and that he wants his mother to do so.

KC was also given the opportunity to question MD. MD is a former tenant at the rental property who moved out in 2019. MD testified to her belief that the Two Month Notice was not issued in good faith because the Landlord tried to evict her in 2019. MD testified that this was due to a "personal vendetta" and because the Landlord wanted to increase rent. MD testified that she disputed the eviction notice she received but left anyway. MD also testified to her belief that the Landlord's mother does not need the Tenant's rental unit.

On questioning by the Tenant, MD testified that her husband was told by the Landlord that he could remain in the rental unit if he "got rid of" MD.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the Act permits a landlord to 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. In this case, the Two Month Notice was issued on the basis that the rental unit will be occupied by the father or mother of the Landlord or the Landlord's spouse.

The Tenant submitted that the Two Month Notice was not issued in good faith. Policy Guideline #2A describes “good faith” 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)).

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.

In this case, I find the Landlord has met the burden of demonstrating the Two Month Notice was issued in good faith. I find it is more likely than not that the Landlord is acting honestly and does not intend to defraud or deceive the Tenant, does not have an ulterior purpose for ending the tenancy, and is not trying to avoid obligations under the Act or the tenancy agreement. Rather, I find it is more likely than not that the Landlord is the primary caregiver of his three children, who spend the majority of the time living with the Landlord. This was not disputed by the Tenant or AR. I also accept that the Landlord intends for his mother to occupy the rental unit.

With respect to the Tenant's assertions that the Landlord could make use of other units, that the basement is sufficient for use, or that the Landlord's mother has attended the rental property infrequently in 2023, I find that landlords retain the right to determine how a rental property is to be used, subject to the Act. I also find that it is the *future* use of the rental unit in dispute that is relevant in this proceeding.

With respect to the Tenant's assertion that the Landlord required the consent of AR to end the tenancy, I find it is more likely than not that the Landlord acted fully within his rights under the Act. I am unaware of and was not referred to any provision in the Act which requires everyone with an interest in a property to provide consent before a notice to end tenancy is issued.

With respect to the Tenant's assertion that the eviction is intended to devalue to marital assets to the detriment of AR, I find there is insufficient evidence before me to support such a conclusion. Indeed, no documentation in support of such a conclusion was submitted into evidence.

With respect to the Tenant's assertion that the Landlord was not acting in good faith because a previous notice to end tenancy was issued in 2019 – more than three years ago – I find that too much time has passed to draw a conclusion from the previous dispute resolution proceeding.

Considering the above, I find that the Tenant's request for an order cancelling the Two Month Notice is dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant an order of possession in favour of the Landlord. In this case, I have reviewed the Two Month Notice submitted into evidence and find that it complies with section 52 of the Act. Accordingly, I grant the Landlord an order of possession, which will be effective two days after it is served on the Tenant.

### Conclusion

The Landlord's application is dismissed without leave to reapply.

The Tenant's request for an order cancelling the Two Month Notice is dismissed without leave to reapply.

By operation of section 55(1) of the Act, the Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. 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 Residential Tenancy Act.

Dated: April 12, 2023

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Residential Tenancy Branch