



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/ 2 Month Notice) issued by the landlord, and recovery of the cost of the filing fee.

The tenants and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlords confirmed receipt of the tenants' application and evidence and the tenants received the landlord's evidence consisting of 2 tenancy agreements for other properties.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Are the tenants entitled to recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on or about October 15, 2021, and monthly rent is \$1,600. Filed in evidence was the written tenancy agreement.

The evidence shows that the landlord issued the tenants a 2 Month Notice by email on November 12, 2022. The Notice was dated November 11, 2022, and had an effective move-out date of January 31, 2023.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the landlord or landlord's spouse.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord testified he owns the rental unit and another two properties in the surrounding areas. The landlord said that he currently is residing in an apartment that he is renting. The landlord confirmed that he has never lived in the residential property, but just wants to take back his property as he and his wife want to live there.

The landlord confirmed that he vacated the property that was listed as his address on the 2 Month Notice (property 1) over a year ago, but used that address on the Notice for landlord's address as it was too much trouble to change addresses. The landlord referred to a tenancy agreement he filed in evidence, which indicated he rented out property 1 in January 2023.

In response, the tenant submitted the landlord lived in property 1 when they entered into the tenancy agreement and that property was available for the landlord to live in rather than evicting them. When they entered into the tenancy agreement, it was with the understanding that they required a long-term tenancy, as they have 3 young children in school in the area. The tenant said the rental unit is a 4-bedroom, 2900sf home and it

does not make sense the landlord and his wife want to occupy the rental unit when they own other properties.

In a written statement, the tenants provided the following, in part:

There is an Implied Longer-Term Lease Despite the 1-year Lease Signed

When we responded to the ad for the house for rent, we made it clear to the Landlord's Agent Mr. [ ] that we had just been evicted because the landlord sold the house, and we were looking for a long-term home for at least 3 years. We asked questions about the Landlord's plans to sell and made it clear that we were looking for stability for our family especially since our daughter was starting kindergarten.

The Agent gave us the following assurances:

- The previous tenant had lived in the house for 5 years and was moving out of province.
- The Landlord lives in another home he owns and has not lived in this house since it was purchased.
- The Landlord had no foreseeable plans to sell.

Following the Agents assurances, we proceeded to sign the 1-year lease with an effective date of 15 October 2021.

[Reproduced as written except for anonymizing  
personal information to protect privacy]

In rebuttal, the landlord said where he lives is his choice and the tenants already have had 4 months to find a new place to live.

The landlord then finished by saying that the monthly rent for the rental unit is low and it is not worth it to rent out the property. The landlord said that the rental market is not good and has to get his property back.

### 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. Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 49 (3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or spouse intends in good faith to occupy the rental unit.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith, which means there is a 2-part test the landlord must meet in order to be successful with their 2 Month Notice.

Tenancy Policy Guideline 2A (PG 2A) states that a landlord may end the tenancy if they or their close family member, landlord and spouse in this case, *"intend in good faith to use the rental unit as a living accommodation or as part of their living space"*.

PG 2A further provides that 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 motive for ending the tenancy**, and they are not trying to avoid their obligations under the Act.

PG 2A addresses good faith as follows:

#### B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636. 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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

...

If there are comparable 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.

The landlord has the burden to prove that there was an honest intention and an absence of bad faith.

In considering the totality of the evidence, I find on a balance of probabilities that the landlord had an ulterior motive in seeking to end the tenancy.

The landlord testified that the monthly rent for the rental unit was too low, and it was not worth renting the property, and just wants his property back.

These statements lead me to conclude the landlord did not issue the 2 Month Notice in good faith and had an ulterior motive when doing so, which was to evict the tenants because they were not paying sufficient rent, in the landlord's view.

Given the landlord's affirmed testimony, I find that the 2 Month Notice was not issued in good faith, but rather I find the landlord had an ulterior motive.

As the landlord did not meet the good faith part of the two-part test, I find it was not necessary to consider whether the landlord truly intended on living in the rental unit for residential purposes for 6 months following the effective date.

Therefore, I grant the tenants' application and I **ORDER** the 2 Month Notice of November 11, 2022, for an effective move-out date of January 31, 2023 is **cancelled** and is of no force or effect.

I **ORDER** the tenancy to continue until it may legally end under the Act.

As the tenants' application was successful, I grant the tenants recovery of the \$100 filing fee. I **authorize** the tenants a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenants should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

### Conclusion

The tenants' application has been granted as I have ordered the 2 Month Notice cancelled and is of no force or effect.

The tenancy will continue until ended in accordance with the Act.

The tenants are granted a 1-time rent reduction of \$100 to recover the cost of the filing fee.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 05, 2023