



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding ATIRA PROPERTY MANAGEMENT  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **CNL**

### Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (Act) for cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under Sections 49 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord, two property managers, CI and NO, 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 (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 served by registered mail on December 7, 2022, Canada Post Tracking Number on cover sheet of decision, the Tenant confirms receipt, deemed served on December 12, 2022;
- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on December 24, 2022, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on December 29, 2022;
- the Tenant's second package of evidence served by email on April 8, 2023, the Landlord confirmed receipt, deemed served on April 11, 2023; and,

- the Landlord's evidence package served by email on April 15, 2023, the Tenant confirmed receipt, deemed served on April 18, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, and Sections 43 and 44 of the *Residential Tenancy Regulation*, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. If the Tenant is not successful, is the Landlord entitled to an Order of Possession?

### 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 confirmed that this periodic tenancy began on March 1, 2008. Monthly rent is \$1,476.00 payable on the first day of each month. A security deposit of \$625.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the child of the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was March 31, 2023.

The Landlord said her whole family lives in the city, and she wants her son to be able to relocate to Canada and have a place to live. The Landlord plans to do some remodelling, clean up the unit to prepare it for her son. One main reason for her son to come back to Canada is for reconnection with the family.

The Landlord said her son is 37 years old, and he is hopeful to find work in the city. The Landlord would not disclose what line of work her son is in, she said it was personal. The son did not attend this hearing or provide any evidence for this matter. The Landlord's mother is 92 years old, and she is the sole motivation for the son to relocate here. The Landlord said they have to start the process, and she definitely has the good faith intention to do what the notice says she plans to do.

CI testified that they offered the Tenant more time than just two months, and they are agreeable to a June 30, 2023 end date. This would allow them time to order furniture and new kitchen items. CI advised that they have informed the Landlord and she is aware of the Act's provision for tenant's compensation if the Landlord does not do what the notice says she will be doing.

The Landlord issued a rent increase on the Tenant, and they asked the Tenant to issue new cheques. The Tenant did this and asked for his old cheques back. It took a long time for the property manager's office to return his old cheques, and in the back and forth with the Tenant, he complained about the property manager's business practices. The Tenant stated the reason for the notice was retaliation for him complaining to the Landlord's agent about how they do business.

The Tenant testified that he has been a long-term tenant in one of the Landlord's rental units. She has two others. The property manager spoke to the Tenant, and the Tenant said he was told that the Landlord likes his unit. The Tenant argues the main reason the Landlord wishes to evict him is because they can make more money renting out his rental unit in today's marketplace. The Tenant also claimed discrimination against him because of the Landlord issuing the Two Month Notice in the Christmastime month.

The Tenant stated he knows his Landlord is a woman. In emails and one telephone call uploaded in evidence, the Tenant points out that the property manager keeps telling him that the Landlord is a man, or refers to the Landlord as 'He'. At one point in a telephone call the property manager says maybe he shares the unit with the Landlord's wife. The Tenant feels they do not know who they are representing, and they are making decisions about his unit before even getting instructions from the Landlord.

The Tenant had a witness available for this the hearing, but at the end of his submissions, he declined to bring his witness into the hearing to give evidence. The Tenant denies that the Landlord has the good faith intention to do what the Two Month Notice says she plans to do.

The property manager maintained the problem with returning the Tenant's old cheques to him was a miscommunication between their front desk and the accounting department. The property manager said they treat everyone equally. They did not discriminate against the Tenant.

The property manager stated they manage several properties for the Landlord and her husband. He said he may have been confused when he was talking to the Tenant, but in reviewing his office documents, he is certain the notice to evict instructions came from the female Landlord for this rental unit.

The Landlord seeks an Order of Possession for June 30, 2023.

### 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.

Although this decision will be rendered more than 30 days after the conclusion of the proceedings, Section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period set out in subsection (1)(d).

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** (1) *In this section:*

**"close family member"** means, in relation to an individual,

- (a) *the individual's parent, spouse or child, or*
- (b) *the parent or child of that individual's spouse;*

...

(2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

- (a) *for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be*
  - (i) *not earlier than 2 months after the date the tenant receives the notice,*

- (ii) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and*
  - (iii) *if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or*
- ...
- (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] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*
- (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 deemed served with the Section 49 Two Month Notice on December 12, 2022. I find the Two Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on December 21, 2022 within 15 days after the date the Tenant received the Two Month Notice.

The Tenant made a claim that he 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. (emphasis added)*

The Landlord submitted that she has the honest intention of her son moving into the rental unit. At present, her son lives out of the country, but because of an aging relative, the son will be moving back to Canada, and the Landlord wants to use this rental unit as her son's new home. The Landlord's property manager stated that they plan to do some renovations before the son moves in. The Landlord's son did not attend the hearing or provide evidence to support this notice. The Landlord stated she is aware of the provisions in the Act which allow compensation to go to the Tenant if the Landlord does not do the stated purpose as noted on the Two Month Notice.

The Tenant made claims that the Landlord does not have the honest intention of using the rental unit as noted in the Two Month Notice. He stated because he has been living in the rental unit since 2008, the Landlord wants to evict him to get more money from the city marketplace rental community.

Based on the totality of the evidence, I find that the Landlord has not met the good faith intention requirement on a balance of probabilities that her son will be moving into the rental property. I find the Landlord's answers to questions about her son's planned move-in to be evasive. I find the plans the property manager state will be done in the rental unit are self serving and difficult to believe, as there was no documentary evidence supporting their claims of planned renovations.

I cancel the Landlord's Two Month Notice as the Landlord has not proven on a balance of probabilities that she will be accomplishing the stated purpose. I grant the Tenant's

application to cancel the notice, and the tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant's application for dispute resolution is granted.

The Landlord's Two Month Notice is cancelled.

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: May 29, 2023

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Residential Tenancy Branch