



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding RE/MAX CITY REALTY and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNL, FFT

### Introduction

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

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 26, 2023 (the "Two Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The property owner, EH, EH's property manager JK, and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Amendment of Landlord

This application initially named RE/MAX City Realty ("RE/MAX") as the landlord and respondent. EH confirmed that she is the owner of the rental unit. RE/MAX and JK were hired by EH to manage the rental unit. Pursuant to section 64(3)(c) of the Act, I have amended this application to include EH as a landlord and respondent.

### Preliminary Matter – Service of Dispute Resolution Documents

EH and JK acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence.

The Landlords did not serve a copy of their documentary evidence on the Tenant. Under Rule 3.15 of the Rules of Procedure, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. JK indicated that the Tenant's evidence includes evidence submitted by the Landlords. As such, I will only refer to documentary evidence submitted by the Tenant for the purpose of this application.

### Issues to be Decided

1. Should the Two Month Notice be cancelled?
2. Is the Tenant entitled to reimbursement of the filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on September 1, 2021 with a previous landlord, and is currently month-to-month. Rent is \$1,116.50 due on the first day of each month. The Tenant paid a security deposit of \$550.00.

EH purchased the rental unit on February 1, 2022 and assumed the existing tenancy.

On February 26, 2023, the Landlords served the Tenant with the Two Month Notice. This notice names RE/MAX as the landlord and is signed by JK as agent. The effective date was May 1, 2023. The stated reason for ending the tenancy is that the rental unit will be occupied by the "landlord or the landlord's spouse". The Tenant acknowledged receipt of the Two Month Notice attached to his door on February 26, 2023.

Included with the Two Month Notice was an email from EH to JK dated February 22, 2023 ("EH's Letter"), which states that EH decided to take the unit back for her own use due to "work reasons", and that in the "upcoming months", EH will be "visiting more frequently due to business demand".

EH explained that her primary residence is on the island, and that her work is hybrid/remote-based requiring travel to the mainland. EH stated that she needs the rental unit for work use. According to EH, she has business meetings on the mainland, and is thinking to take the unit back for work so that she will be able to stay in the dispute city longer. EH explained that she is divorced, and due to her parenting responsibilities on the island, she plans to spend half of her time in each location and travel between the island and the mainland.

The Tenant testified that on February 14, 2022, he had a phone conversation with another agent from RE/MAX, BT, who mentioned that the owner was going through financial trouble and needed to raise the rent or will be forced to sell the rental unit. According to the Tenant, he informed BT about the legally permitted amount of annual rent increase and how a purchaser could take over the lease if the owner were to sell. The Tenant submitted screenshots of text messages with BT into evidence. The Tenant stated that BT did not seem interested to continue the conversation. The Tenant stated that he received the Two Month Notice approximately one week later. The Tenant explained that he felt suspicious and found the reason given for ending the tenancy, i.e. business reasons, to be vague and unclear. According to the Tenant, he researched market rent and determined that similar units are now being rented at \$1,800.00 per month. The Tenant indicated that he had reason to believe there is an ulterior motive to get him out and increase the rent. The Tenant stated that he learned EH is the owner from EH's Letter attached to the Two Month Notice.

According to EH, BT was her agent for purchasing the rental unit. EH stated that work was one consideration, and at the time she contacted the Tenant, she was contemplating relocating from the island to the mainland. EH stated that her parenting schedule negotiations had not been finalized at the time. EH indicated that she had hoped to have a discussion with the Tenant about his plans. EH explained that a few months later, she could not make a sudden move to the mainland due to her parenting schedule, but decided that she still needed to spend more time on the mainland. According to EH, she had asked her property manager to communicate with the Tenant. EH stated that the Tenant shut down, did not want phone calls, and did not want them to visit. EH acknowledged that there was a potential idea of selling the rental unit but not at this time. EH explained that for reasons including cost, frequency, and convenience, it would make sense to have her own place to come back to every other week other than using an alternative such as Airbnb. EH indicated that she is not currently traveling back and forth a lot at this time as she is hoping for a conclusion of this matter first so that she could plan her trips fully. EH indicated that if she can have the rental unit back,

she and her family can stay longer. EH stated that she expects to be in this arrangement for the next six months as she wants to focus more on the mainland for more business opportunities.

### Analysis

#### *1. Should the Two Month Notice be cancelled?*

Pursuant to section 49(3) of the Act, a landlord is permitted to end a tenancy if the landlord or a close family member of the landlord intends, in good faith, to occupy the rental unit.

Section 49(7) of the Act requires the notice given by the landlord under section 49(3) to comply with section 52, which states that the notice to end tenancy must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form.

I have reviewed the Two Month Notice and find that it is signed by JK on behalf of RE/MAX as the landlord. However, I find that by attaching EH's Letter, the Tenant knew or should have known that EH is the landlord for the purpose of the Two Month Notice. I find it is reasonable to amend the Two Month Notice to include EH as a landlord, and I do so pursuant to section 68(1) of the Act. I find the Two Month Notice to otherwise comply with the requirements of section 52 of the Act.

I find the effective date of the Two Month Notice does not comply with section 49(2)(ii) of the Act, which requires the effective date to be the day before the day in the month that rent is payable. Pursuant to section 53(3) of the Act, I find the effective date is deemed to be May 31, 2023.

I find the Tenant received the Two Month Notice on February 26, 2023, and submitted this application on February 27, 2023. I find the Tenant made this application within the 15-day limit under section 49(8)(a) of the Act.

When a tenant makes an application to dispute a two month notice to end tenancy, the onus is on the landlord to justify, on a balance of probabilities, the reasons set out in the notice and to demonstrate good faith in issuing the notice.

Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states:

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)).

[...]

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.

Upon considering the sum of the parties' testimony and evidence, I am not satisfied on a balance of probabilities that EH intends in good faith to occupy the rental unit and that there is no ulterior motive.

Firstly, I find EH has not provided sufficient evidence to demonstrate that she needs to occupy the rental unit for work purposes. I find in EH's Letter dated February 22, 2023, she had indicated that in the "upcoming months", she will be "visiting more frequently due to business demand". However, I find EH's evidence during the hearing was that she has not been travelling frequently between the island and the mainland so far, but is waiting for a conclusion of this dispute. Furthermore, I find EH described her work arrangement and frequency of travel in general terms only. I find EH has not provided

any specific examples of her schedule, work engagements, travel logistics, or other details to explain how she would live out of the rental unit and why it would make sense for her.

Secondly, I accept the Tenant's evidence that he received a call from EH's agent BT on February 14, 2023, in which BT advised that the owner was in financial trouble, requested a rent increase, and stated that if the Tenant could not meet this demand, the owner would sell the property and the Tenant would have to move out. I find the Tenant's text messages to BT are consistent with the Tenant's description of this call. I find the Tenant was served with the Two Month Notice not long after receiving the call from BT. Under these circumstances, I find EH has not provided sufficient evidence to dispel the ulterior motives raised by the Tenant, which include increasing the rent or listing the rental unit for sale after the Tenant moves out.

As stated above, "good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy". Based on the evidence presented, I am unable to conclude that EH intends to occupy the rental unit in good faith, without any dishonest or ulterior motive. I conclude that EH has not met her onus of proof required under section 49 of the Act.

Accordingly, I order that the Two Month Notice be cancelled and of no force or effect.

*2. Is the Tenant entitled to reimbursement of the filing fee?*

The Tenant has been successful in this application. I grant the Tenant reimbursement of his filing fee under section 72(1) of the Act. Pursuant to section 72(2)(a), I authorize the Tenant to deduct \$100.00 from June 2023 rent payable to the Landlords in full satisfaction of the filing fee awarded.

Conclusion

The Two Month Notice is cancelled and of no force or effect.

The Tenant's claim for reimbursement of the filing fee is granted. Pursuant to section 72(2)(a) of the Act, the Tenant is authorized to withhold a one-time amount of **\$100.00** from June 2023 rent.

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: May 26, 2023

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Residential Tenancy Branch