



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, MNDCT, OLC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on April 28, 2023. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence. The Landlord confirmed receipt of the Tenants' amendments.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As

a result, I exercised my discretion to dismiss all of the grounds the Tenants applied for, with leave to reapply, with the exception of the following claims:

- to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property

#### Issues to be Decided

- Should the Notice be cancelled?
  - If not, is the landlord entitled to an Order of Possession?

#### Background and Evidence

The Tenant acknowledged receiving the Notice on December 31, 2022. A copy of the Notice was provided into evidence and it lists the following grounds to end the tenancy:

The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

- The Child of the Landlord or the Landlord's Spouse

The Landlord explained that his son will be moving into the rental unit, which is the lower suite in the house that he lives in. The Landlord stated that there are 3 bedrooms upstairs, and there are two sons. One son, ZY, was at the hearing, and is 27 years old. The other son is 13. Both sons live upstairs currently with the parents, but the Landlord stated that they need more room for the older son to move to.

ZY stated that he has recently started a new business, in December 2022, and he needs more privacy. ZY stated that he quit his last job in early December, and now that he is working from home for himself, he needs more room.

The Tenant stated that she believes this Notice was issued in bad faith, because the Landlord issued it shortly after they had an argument with the Landlord in December about hot water issues. The Tenant stated that on December 18, 2022, after having issues with the hot water, the parties got into an argument and the Landlord started pounding on the Tenant's door, demanding her to move out. The Tenant feels this is retaliatory.

The Landlord stated that this Notice has nothing to do with the dysfunction and they assert they issued it simply because the Landlord's son needed more space.

## Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that his son intends in good faith to occupy the unit (as indicated on her 2-Month Notice).

I acknowledge that there has been degradation in the relationship between the Landlord and the Tenant. The Tenant is alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because their relationship has soured.

Once the Landlord's good faith intentions are called into question, the burden of proof rests with the Landlord to demonstrate that he, in good faith, intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2A states the following:

### **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.*

[...]

*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 other ulterior motive.*

I have considered the testimony and the evidence on this matter, in totality, and I note the Landlord is seeking to end this tenancy because his son wants more space. However, I note the good faith intentions of the Landlord have been called into question by the Tenant, given the escalating dysfunctions and disputes between the parties in the weeks, leading up to the issuance of the Notice.

In this case, the Landlord must demonstrate that the escalating conflict between them and the Tenant did not substantially contribute to them issuing the Notice. However, I do not find this has been sufficiently demonstrated. I note the Landlord provided no corroborating documentary evidence regarding the son's business or employment changes which are allegedly contributing to his need for more space. The Landlord provided no documentary evidence, other than an electrician receipt.

Ultimately, I do not find the Landlord has sufficiently demonstrated that he did not have an ulterior motive for issuing the Notice. In this case, the onus is on the Landlord to substantiate the Notice and importantly, his good faith intentions. I find that the Landlord has not provided sufficient evidence to support his good faith intentions, especially given the pre-existing and escalating conflict, leading up to the Notice. I also find the lack of supporting documentary evidence showing the Landlord's need for the space is problematic in that they have not sufficiently demonstrated their assertions regarding the son's home-based business and his related needs (no record of employment, or business documentation). Therefore, the Tenants' application is successful and the 2 Month Notices received by the Tenants are cancelled.

Further, since the second 2 Month Notice issued in February 2023 is issued for the same or similar reasons, I cancel that Notice as well.

I order the tenancy to continue until ended in accordance with the *Act*.

Pursuant to section 72 of the Act, I award the recovery of the filing fee paid (\$100.00) by the Tenants.

### Conclusion

The Tenants' application is successful. The Notices are cancelled.

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$100.00**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 3, 2023