



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL OLC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on May 26, 2023. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Landlord and the Tenant were both at the hearing and provided affirmed testimony. Both parties confirmed receipt of each others documentary evidence and no service issues were raised.

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

### Preliminary and Procedural Matters

The Tenant 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(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The Tenant acknowledged receiving the Notice on January 18, 2023. The Landlord issued the Notice for the following reason:

*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 Landlord indicated he or his spouse would be moving in.*

In the hearing, the Landlord was asked to explain why the Notice was issued, and he stated that he has, within the last several months, separated from his wife, and started the divorce process. The Landlord is seeking to move into this small cottage and start his new life.

The Landlord explained that there are 3 houses on this property, and he used to live in the front main house with his adult child and ex-wife, and this living arrangement has not ceased. The Landlord stated that his ex-wife moved out of the main house in August 2022, and he moved out of the main house in March 2023. The Landlord stated that another one of his children moved into the main house, which means there are now 2 of his adult children in their 20's living in that house, and he has no interest in living with them there. Rather, the Landlord stated he wants to move into this rental unit, which is a small 1-bedroom cabin on the same property because that is all he needs, and he no longer wants to live with his children.

The Landlord further stated that the other house is rented separately to a friend of his, and has been since December 2022. The Landlord acknowledged that he was going to sell the property late last year, but since the market crashed, and an offer fell through, he no longer wants to sell, and wants to use this as his home, where he can live near, but not with, his children, and his friend living at the other house on the property. The Landlord provided several letters from friends who corroborate that the Landlord is going through a divorce and needs the rental unit to live in for himself, as he currently

has no place to live. The Landlord stated that he has been sleeping on a friends couch since the end of March 2023, waiting for this unit to be vacant.

The Tenant feels this Notice was issued in bad faith, because the Landlord wanted to sell the property last year, and she does not believe he intends to reside in the rental unit. The Tenant also pointed out that the Landlord issued a different 2 Month Notice late last year, and that Notice was set aside because the Landlord failed to provide all 4 pages of that Notice. Although the Landlord re-issued this Notice, and provided it for this hearing, the Tenant still asserts the Landlord does not plan on moving in, and just wants more rent.

### Analysis

Based on the evidence and testimony before me, I make the following findings:

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

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**

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. I note the Tenant feels this Notice is not issued in good faith, because the Landlord had previously issued a 2 Month Notice last year at the same time he was trying to sell the property. However, I have also considered that the Landlord provided a compelling explanation as to why he needs the property, going forward, and that he no longer intends to sell the property. I also note the Landlord has provided around 8 different signed letters corroborating that he plans to move in, and that he needs the space, following his recent divorce. I find the Landlord's explanation as to why he needs the rental unit is reasonable, and compelling. I find the Landlord has sufficiently demonstrated his good faith intentions. The Tenant's application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

I note that under the *Act*, if the Landlord does not move into the rental unit as set out in the 2-month notice, the Tenant would be entitled to compensation as follows:

***Tenant's compensation: section 49 notice***

***51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if***

***(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or***

***(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.***

However, this matter would need to be adjudicated after the Landlord has been given a chance to accomplish the stated purpose.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy dated January 18, 2023, is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia 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 30, 2023

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Residential Tenancy Branch