



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-4M, MNDCT, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit, dated February 20, 2023, and effective June 30, 2023 ("4 Month Notice"), pursuant to section 49(6);
- a monetary order of \$35,000.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*"), or tenancy agreement, pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

The landlord and the tenant attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 74 minutes from 1:30 p.m. to 2:44 p.m.

The landlord's "witness CM" was excluded from the outset of this hearing and left at 1:32 p.m. He returned to testify from 2:27 to 2:39 p.m. The tenant objected to the landlord calling the witness because she did not have prior notice. The landlord notified the tenant at the beginning of this hearing that she intended to call this witness. I allowed witness CM's testimony because it is relevant to this application and both parties had an opportunity to question the witness.

Both parties confirmed their names and spelling. Both parties provided their mailing addresses for me to send this decision to them after this hearing.

The landlord confirmed that she owns the rental unit. She provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. During this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given an opportunity to settle and declined to do so.

I cautioned the tenant that if I dismissed her application without leave to reapply, I would uphold the 4 Month Notice, end this tenancy, and issue an order of possession against her, effective on June 30, 2023, the effective date on the 4 Month Notice. The tenant affirmed that she was prepared for the above consequences if that was my decision.

I cautioned the landlord that if I cancelled the landlord’s 4 Month Notice, I would not issue an order of possession against the tenant and this tenancy would continue. The landlord affirmed that she was prepared for the above consequences if that was my decision.

During this hearing, I repeatedly cautioned the tenant about interrupting me, the landlord, and witness CM. I repeatedly cautioned the tenant about arguing with me, yelling at me, asking me the same questions, and repeating the same information throughout this hearing. I provided the tenant with ample and additional time during this hearing to search through her evidence documents, in order to find a copy of the 4 Month Notice, that is the subject of this hearing.

During this hearing, I repeatedly asked both parties to answer my questions directly. Both parties affirmed that they could hear me properly during this hearing. I was required to repeat myself and rephrase my questions to both parties throughout this hearing.

### Preliminary Issues – Service of Documents and Dismissal of Tenant's Claim

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. The tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

The tenant confirmed receipt of the landlord's 4 Month Notice on February 20, 2023, by way of posting to her rental unit door. The landlord stated that the tenant was served with the 4 Month Notice on the above date using the above method. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 4 Month Notice on February 20, 2023.

During this hearing, the tenant affirmed that her application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement was related to cancellation of the 4 Month Notice. Accordingly, this claim is dismissed without leave to reapply, since I have made a decision regarding the 4 Month Notice, as noted below.

### Preliminary Issue – Severing the Tenant's Monetary Application

The following RTB *Rules* are applicable and state (my emphasis added):

#### *2.3 Related issues*

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

#### *6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

At the outset of this hearing, I informed both parties that Rules 2.3 and 6.2 of the RTB *Rules of Procedure* allow me to sever issues that are not related to the tenant's main, urgent application. The tenant applied for 3 different claims in this application. Two of the tenant's claims were dealt with at this hearing.

I informed both parties that the tenant was provided with a priority hearing date, due to the urgent nature of her application to cancel the 4 Month Notice and for an order to comply. I notified them that these were the central and most important, urgent issues to be dealt with at this hearing. They affirmed their understanding of same.

I notified both parties that the tenant's monetary claim was dismissed with leave to reapply. I informed them that the tenant's monetary claim was a non-urgent lower priority issue, and it could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. They affirmed their understanding of same.

After 74 minutes of this 60-minute maximum hearing time, there was insufficient time to deal with the tenant's monetary claim for \$35,000.00 at this hearing. Both parties submitted voluminous documents and evidence for this hearing.

I informed both parties that the tenants' application for a monetary order of \$35,000.00 for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, is severed and dismissed with leave to reapply. I notified them that the tenant is at liberty to file a new RTB application and pay a new filing fee, if she wants to pursue this claim in the future. They affirmed their understanding of same.

#### Issues to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use of property?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and witness CM at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2015. Monthly rent in the current amount of \$641.00, plus an additional \$50.00 for hydro

utilities, is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenant and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit. The rental unit is a cabin, located on a property with two other separate buildings on it.

A copy of the landlord's 4 Month Notice was provided for this hearing. Both parties agreed that the 4 Month Notice states the following reason for seeking an end to this tenancy (which was read aloud by the tenant during this hearing):

*I am ending your tenancy because I am going to: (check a box that applies)*

- *convert the rental unit for use by a caretaker, manager or superintendent of the residential property...*

The landlord testified regarding the following facts. The two rental buildings are aging for 40 years. The third rental building is maybe 50 to 60 years old. In 1996, the main basement was the landlord's permanent residence. She moved out of the area and continues to live out of town to the present date. She was driving on her own to the rental unit as necessary. As she has gotten older, she cannot do the drive on her own. Since 12 to 14 years ago, she has been depending on a driver, who is her daughter, to go to the rental unit. The landlord is 76 years old. The rental unit is 700 kilometres away and a 10 hour drive. It is a burden for her daughter because she has to take an unpaid leave of absence to drive the landlord. There are emergencies and structural problems, so the landlord has to get to the rental unit to do repairs and hire contractors. She needs to hire a full-time caretaker to reside in the tenant's rental unit. She needs property maintenance, repairs, and plumbing to be completed as per the contractors' schedules. She needs to resolve emergency issues with the pipes, sewer, and storm issues. She needs someone to be responsible on-site as a caregiver and ensure there is no trespassing on the adjoining property. She needs to ensure that all the tenants do not impose on each other, since the rental space is there.

The landlord stated the following facts. She provided photos as evidence. She provided one example of a communication with the tenant from 2015. A roof leak was reported by the tenant to the landlord and when the day and time came for the contractor to be there, she had to try to arrange it according to the tenant's schedule because the tenant had to give access. The tenant said that the contractors did not attend, and she was waiting all day. When the landlord makes an agreement with the contractors, sometimes they do not show up. The contractors did show up that day and saw the tenant's note that she left for them, so they did not have access and they could not do their work. She can give other examples, but she has not done so. There is

another downstairs tenant whose shower stall was flooding in the basement, and this occurred recently, so it was not submitted as evidence. Yesterday, there was a response from a plumber after several days because he had other jobs. It is an “impossibility” for the landlord to be at the property all the time. There are lots of responsibilities, concerns, and issues. She has started the process of hiring a caretaker, there are several interested parties, she has checked excellent references, and she is in the process of negotiating with one caretaker.

The tenant testified regarding the following facts. The landlord has provided evidence regarding repairs from 2015, which is odd. There have not been many problems since 2015. The landlord hires contractors to manage the repairs and maintenance, by way of phone and internet. Over the last year, the history of the landlord's eviction notices and complaints is untruthful. The tenant provided past RTB cases where other arbitrators have warned the landlord not to continue her illegitimate evictions. The landlord has used different reasons to evict the tenant with different notices to end tenancy. In 2019, the landlord issued a notice to end tenancy to put a live-in caretaker in another neighbouring cabin where that tenant moved out, a daughter and her husband moved in, and the landlord said that the daughter's husband could be the caretaker. In September 2022, the landlord demanded \$300.00 extra for rent from the tenant and another tenant. If the landlord needs a caretaker since 2019, and it is urgent, there is a proposed caretaker in the other cabin. The caretaker request by the landlord is not legitimate. Before the landlord issued a notice for the tenant to move out because the landlord and her daughter wanted to move in. The landlord also tried to evict the tenant by saying that there was an order from the district to decommission the rental unit, which was not true, as per the tenant's evidence, since there is no order from the district. The year 2015 was the first notice to end tenancy from the landlord against the tenant, which the tenant provided as evidence. There are letters from other tenants, provided as evidence. The landlord has neglected the repairs and painting of other tenants' units. This is a bad faith 4 Month Notice for eviction.

The landlord stated the following in response. The tenant's submissions are not related to the 4 Month Notice. The tenant's witness statements from other tenants are all hearsay and should not be considered. The landlord's witness CM is a caretaker but has not been hired by the landlord and there is no signed employment contract with him, just a verbal agreement. The landlord and witness CM are in the negotiation phase and process. Witness CM will testify about his negotiations with the landlord. The landlord does not have all of the information in order to make a written agreement with witness CM at this time because she does not know if the tenant will vacate as per the 4 Month Notice on June 30, 2023.

Witness CM testified regarding the following facts in response to questions from the landlord and the tenant. He is prepared to move in as a caretaker for the rental unit. He is experienced in caretaking with houses. The landlord asked him not to describe his duties as a caretaker during his testimony. Anything that is above his capabilities, he can hire external contractors to complete. He is available 24/7 for emergencies if he lives on the property. He consults out of his home. He can be at the rental unit when needed. He has no relationship with the landlord. He moved to a different area and was looking for odd work and found out about the landlord's job from a friend. He contacted the landlord approximately one month prior to this hearing, maybe mid to late March or early April 2023, but he cannot recall the exact date. He has not reached an agreement regarding his rent with the landlord.

Witness CM stated the following facts in response to questions from me. He has no written agreement with the landlord. He has not reached an agreement because the rental unit is occupied right now. He is in the process of negotiating the rent with the landlord. He is not a professional or expert in caretaking. He has only completed caretaking on his own property out of province, and he has been paid on occasion for rented properties. His age is in the early 50s. The scope of his work has not been decided or formalized with the landlord. She has talked about him doing weeding, septic, grass, repairs, minor electrical work, plumbing, painting, and gardening. He has no signed written employment agreement with the landlord regarding his salary or rent. There has been a verbal agreement. Once the cabin is available, he will start work. He currently works for himself, as a marketing consultant, which is unrelated to caretaking duties. The landlord is older, and it is hard for her to travel and she told him that but asked him not to share it.

### Analysis

#### Burden of Proof

During this hearing, I informed both parties that the landlord had the burden of proof, on a balance of probabilities, to prove the reason for issuing the 4 Month Notice to the tenant. I notified them that the *Act*, *RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of the reason selected on the 4 Month Notice. Both parties affirmed their understanding of same.

The landlord confirmed receipt of the tenant's application, which includes instructions regarding the hearing process. The landlord received a document entitled "Notice of

Dispute Resolution Proceeding” (“NODRP”), which contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made and links to the RTB website and the *Rules* are provided in the same document. During this hearing, I informed both parties that I had 30 days from this hearing date, to issue a written decision. Both parties affirmed their understanding of same.

The landlord received a detailed application package from the tenant, including the NODRP document, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to the landlord to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of her 4 Month Notice, since she chose to issue it on her own accord.

The following RTB *Rules* are applicable and state the following, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord did not sufficiently present her evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the landlord failed to sufficiently explain and present her evidence regarding the 4 Month Notice. The landlord failed to sufficiently reference and explain the documentary evidence she submitted for this hearing.

This hearing lasted 74 minutes, which is more than the 60-minute maximum hearing time, so the landlord had ample time to present her evidence and respond to the tenant's submissions. I repeatedly asked the landlord if she had any other information to present and if she wanted to respond to the tenant's submissions.

*Findings*

According to subsection 49(8)(b) of the *Act*, a tenant may dispute a 4 Month Notice by making an application for dispute resolution within 30 days after the date the tenant received the notice. The tenant received the 4 Month Notice on February 20, 2023, and filed her application to dispute it on March 20, 2023. Therefore, the tenant is within the 30-day time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the reason on the 4 Month Notice. I informed both parties of same during this hearing.

Subsection 49(6)(e) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord intends, in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

*Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use*, states the following, in part:

*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. 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 (s.32(1)).*

On a balance of probabilities and for the reasons stated below, I find that the landlord did not provide sufficient testimonial or documentary evidence that she intends, in good faith, to convert the rental unit for use by a caretaker of the residential property. The landlord did not indicate on the 4 Month Notice, whether she requires any permits or approvals to convert the rental unit for the caretaker. I find that the landlord has ulterior motives for issuing the 4 Month Notice to the tenant and it was not issued in good faith. I find that the landlord has not met her onus of proof under section 49(6)(e) of the Act.

The tenant provided undisputed, affirmed testimony that the landlord asked the tenant to pay extra money for rent of \$300.00 in September 2022, approximately 5 months before the landlord issued the 4 Month Notice to the tenant in February 2023. The landlord did not dispute same during this hearing.

The tenant provided undisputed, affirmed testimony that she received other notices to end tenancy from the landlord, including Two Month Notices to End Tenancy for Landlord's Use of Property ("2 Month Notices"), both parties attended previous RTB hearings regarding those notices, and they were cancelled. The landlord did not dispute same during this hearing.

The tenant provided copies of two previous RTB decisions from 2015 and 2016, the files numbers of which appear on the cover page of this decision. The first decision, dated October 30, 2015, from another Arbitrator, states that the landlord's 2 Month Notice issued May 23, 2015, was cancelled. The second decision, dated July 14, 2016, from another Arbitrator, states that the landlord's 2 Month Notice, dated April 30, 2016, was withdrawn by the landlord during that hearing. The second decision also provides 3 other RTB file numbers and refers to 5 RTB hearings between both parties that year.

While the above previous RTB decisions are from 2015 and 2016, which is many years prior to this hearing on May 5, 2023, I note that a previous history of the landlord issuing notices to end tenancy to the tenant, and both parties appearing at previous RTB hearings to determine same, show a pattern of behaviour by the landlord at attempting to evict the tenant, which questions her good faith intentions regarding this current 4 Month Notice.

I find that the above demonstrates that there are conflicts and tensions between both parties in this tenancy, which questions the landlord's good faith intentions for issuing the 4 Month Notice to the tenant.

The landlord did not provide testimonial evidence as to why she wants a caretaker to move into the tenant's specific rental unit, as opposed to any other units in neighbouring buildings on the same property owned by the landlord.

The tenant provided undisputed, affirmed testimony that the landlord already tried to hire a caretaker to live at a neighbouring property. The landlord did not dispute same, during this hearing. The landlord did not show why she needs another caretaker, witness CM, to occupy the rental unit, if she already has another caretaker living at a neighbouring property.

The landlord and witness CM both agreed that the landlord has not hired witness CM as a caretaker, that both were still negotiation employment terms, and that both have not signed a written employment agreement.

The landlord testified that the only remaining issue to discuss with witness CM was when the tenant was going to vacate the rental unit, so he could move in. However, witness CM testified that no rent or pay has been agreed or discussed with the landlord, and that no terms of employment, including caretaker tasks or duties, have been formalized with the landlord. Witness CM testified that he is not a professional caretaker, that he has mainly completed this work as a side job on his own property, and that he currently works in a completely different job as a marketing consultant, that is unrelated to caretaking.

Witness CM testified that he did not even speak to the landlord about a caretaking job until at least mid-March 2023 to early April 2023, which is well after the 4 Month Notice was issued to the tenant on February 20, 2023. Therefore, the landlord did not even have a caretaker selected at the time the 4 Month Notice was issued, and still does not

have a written agreement or terms of employment determined with witness CM, months after the 4 Month Notice was issued, as negotiations are still ongoing.

As noted above, it is the landlord's burden of proof to show that the landlord, intends, in good faith, to convert the rental unit for use by a caretaker of the residential property, as this was the reason indicated the 4 Month Notice to the tenant. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met the burden of proof.

Accordingly, the tenant's application to cancel the landlord's 4 Month Notice is granted. The landlord's 4 Month Notice, dated February 20, 2023, and effective June 30, 2023, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession against the tenant.

### Conclusion

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

The tenants' application for a monetary order of \$35,000.00 for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, is dismissed with leave to reapply.

The tenant's application to cancel the landlord's 4 Month Notice is granted. The landlord's 4 Month Notice, dated February 20, 2023, and effective June 30, 2023, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession against the tenant.

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 08, 2023

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Residential Tenancy Branch