



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      CNL, DRI-ARI-C, FFT  
OPL, FFL

### **Introduction**

This hearing convened as a result of Cross Applications. In the Tenants' Application, filed on November 9, 2022, they sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use, issued on October 31, 2022 (the "Notice"), to dispute a rent increase and to recover the filing fee. In the Landlords' Application, filed on January 10, 2023, the Landlords sought an Order of Possession based on the Notice and recovery of the filing fee.

The hearing of the parties' cross applications was scheduled for teleconference hearing on March 23, 2023 and continued on May 25, 2023. Both parties called into the hearings. The Landlords were also assisted by an Agent, G.C.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. During the hearing on March 23, 2023 the parties each made submissions regarding a translation of two audio recordings submitted in evidence by the Tenants. The recording related to discussions which were in Mandarin such that I was not able to understand what the parties were saying. In her original evidence package, the Tenants supplied a translation of these telephone conversations which the Landlord alleged was inaccurate. At the conclusion of the March 23, 2023 hearing and ordered the Tenants to provide a certified translation. The certified translation was provided in evidence before me on April 13, 2023. No other issues with respect to service or

delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matter—Tenant's Claims

The parties agreed that the Landlords did not serve a formal Notice of Rent Increase, nor has the Landlord made an application for an additional rent increase. As such the Tenants' request to dispute a rent increase was not relevant. I therefore dismiss that portion of the Tenants claim without leave to reapply.

#### Preliminary Matter—Date and Delivery of Decision

The hearing of this matter Application concluded on May 25, 2023. This Decision was rendered on June 28, 2023. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30-day period.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Landlords entitled to an Order of Possession based on the Notice?
3. Should either party recover the filing fee?

#### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution first the Landlord presented their evidence first.

On the first day of the hearing the Landlord, L.S., testified as follows.

She stated that she issued the Notice because her parents are moving into the basement suite. At the March hearing the Landlord stated that they intended to fly to Canada in January but delayed their flight awaiting the outcome of this hearing.

L.S. further testified that her parents will not be paying rent, but they will help out financially, noting that her parents are part owners having provided them with the 25% downpayment for the home. She confirmed her parents own a home in China but intend to sell their home after they move to Canada and will do so remotely with their agent.

In response to the Tenants' claim that the Landlords only issued the Notice because they want more rent, L.S. denied asking the Tenants to pay more rent.

L.S. further stated that her parents have not seen her daughter, who is now 4 years old, because of the pandemic. L.S. stated that she is an only child and her parents want to live in Canada and they are hoping to begin the immigration process as soon as possible.

The Landlords also submitted an Affidavit in evidence which set out the Landlord's position. L.S. confirmed the contents. In this affidavit the Landlord deposes that her parents will provide child care, pay all utilities and pay 30% of the mortgage for the home, all of which will provide financial assistance to the Landlords family.

In response to the Landlord's testimony the Tenant, X.Z. also known as C.Z. testified as follows. She referred to the October 23, 2022 audio recording where the Landlord, L.S., asked for a rent increase. The Tenant noted that this rent increase was a result of the Landlord's claim that she was unable to manage her finances with increasing cost. The Tenant further claimed the L.S. told her that if they refused to pay the increased rent she would post an advertisement and find other tenants.

The Tenant also noted that in this discussion, L.S. stated that if they did not agree to the rent increase she would issue a 2 Month Notice.

As noted previously in this my Decision, during the first hearing L.S. took issue with the Tenant's version of events as it related to the telephone conversations and stated that

the translation was inaccurate; she claimed it only provided the Tenants' side of the story, not her's. She also stated that the video was without their permission.

When the hearing reconvened, the Tenants had provided a certified translation of the telephone conversations. L.S. testified that she had received the certified translation and agreed to its contents. L.S. then continued her testimony as follows.

- Her parents are flying into Canada on June 13, 2023.
- Her parents paid the down payment of \$500,000.00 and are 25% owners of the property although they are not registered on title.
- She will be applying for Grandparents' immigration.
- She is an only child, and they want their family to be together.
- She lives upstairs in a three bedroom unit with two children and her parents will move into the basement.
- The grandparents will help to take care of the Landlord's children, who are 4 and 7 years old.
- The Landlord stated that if they can't regain possession of the rental unit they will need to rent a place for her parents.

In response to the Tenants' allegation that the Landlord wanted to raise the rent and when they refused the Landlord issued the Notice, the Landlord stated that this was not true, that in fact she thought that it was only a 1 year contract and thought they needed to renegotiate. She further claimed she agreed to another 6 months but it was always her intention that her parents be able to move into the unit.

### Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Act*.

A landlord may regain possession of their rental unit and issue a Notice to End Tenancy for Landlord's Use pursuant to section 49 provided they issue the notice in *good faith*.

*Residential Tenancy Branch Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* provides in part as follows:

## **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. 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)).

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.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.

If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not 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 other ulterior motive.

After consideration of the testimony and evidence before me, and on a balance of probabilities, I find the Notice should be cancelled as I find the Landlords did not issue the Notice in good faith. I further find the Landlords have an ulterior motive for ending this tenancy, namely, that they issued the Notice when the Tenants refused to pay more rent.

At the original hearing before me the Landlord, L.S. denied asking the Tenants to pay more rent. She took issue with the Tenants' translation of the audio recordings such that an adjournment was required and the Tenants were put to the time and expense of obtaining a certified translation.

I am persuaded by the certified translations provided in evidence before me that the reason the Landlords issued the Notice was due to the fact the Tenants refused to pay more rent. While those recordings/translations speak for themselves, I note the following:

- The Landlord repeatedly threatened to raise the Tenants' rent.
- The Landlord spoke of her need to raise rent due to interest rates.
- The Landlord informed the Tenants that if they didn't rent to the Tenants they would rent to others at a higher price.
- The Landlord also asked the Tenants the maximum price they would pay.
- The Landlord stated "I will for sure raise rent".
- The Landlord also stated "I won't rent it to you at this price".

The parties had some disagreement as to the terms of the tenancy and when the Tenants attempted to inform the Landlords that fixed term tenancies with automatic move out clauses were not enforceable the Landlord dismissed this information.

Most concerning, when the Tenants attempted to assert their rights under the *Residential Tenancy Act*, and inform the Landlord that rent could only be raised in accordance with the law, the Landlord threatened to issue a notice to end tenancy for landlord's use and either move in herself or move her parents into the rental unit. The Landlord went so far as to say "I don't want to rent it to you, whether they come or not".

While I am certain the Landlord would like to have her parents in Canada to help out financially and with child care, I find it more likely the Landlord issued the Notice in response to the Tenants' refusal to pay more rent as she did not mention this plan until after the Tenants refused to pay more rent. As well, and as indicated above, during these conversations the Landlord also suggested *she* may move into the unit, such that the plan for her parents move does not appear to have been well planned.

I therefore grant the Tenants' request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

As the Tenants have been successful in their Application, I also award them recovery of the filing fee.

The Landlords' application for an Order based on the Notice and recovery of the filing fee is dismissed without leave to reapply.

Conclusion

The Tenants' request to cancel the Notice is granted. The Tenants are also entitled to recover the filing fee.

The Landlords' claim is dismissed without leave to reapply.

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: June 28, 2023

---

Residential Tenancy Branch