



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL

### **Introduction**

The hearing was convened in response to Two Applications for Dispute Resolution filed by the Tenant. In each Application for Dispute Resolution, the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use.

The Tenant stated that on March 09, 2023 the first Dispute Resolution Package was personally served to the Landlord. The Agent for the Landlord acknowledged that these documents were received.

The Tenant stated that on May 10, 2023 the second Dispute Resolution Package was personally served to the Landlord. The Agent for the Landlord acknowledged that these documents were received.

On May 05, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on June 13, 2023. The Tenant acknowledge receipt of this evidence and it was accepted as evidence for these proceedings.

On June 15, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the Tenant's door on June 14, 2023. The Tenant acknowledge receipt of this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Issue(s) to be Decided

Should either of the Two Month Notices to End Tenancy for Landlord's Use of Property be set aside?

#### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 21, 2019 and that rent is due by the first day of each month.

The Landlord and the Tenant agree that on March 01, 2023, the Landlord posted a Two Month Notice to End Tenancy for Landlord's Use of Property on the Tenant's door, which declared that the rental unit must be vacated by April 30, 2023 because it will be occupied by the landlord's child.

The Landlord and the Tenant agree that on April 24, 2023, the Landlord posted a Two Month Notice to End Tenancy for Landlord's Use of Property on the Tenant's door, which declared that the rental unit must be vacated by June 30, 2023 because it will be occupied by the landlord's child.

The Agent for the Landlord stated that the second Two Month Notice to End Tenancy for Landlord's Use of Property was served because the first Two Month Notice to End Tenancy for Landlord's Use of Property did not give one full month's notice that the tenancy would end, given that it was served by posting it on the door.

The Agent for the Landlord stated that both of the Two Month Notices to End Tenancy for Landlord's Use of Property were served because the landlord's son wishes to move into the rental unit. In support of the notices to end the tenancy, the Agent for the Landlord stated that:

- The Landlord's son is getting married on July 01, 2023;
- The son intends to move into the rental unit with his new wife once it is vacated;
- The son currently lives with his father and wishes to occupy the rental unit so he and his new wife can have more privacy;
- There are currently two bachelor suites in this residential complex, which are connected by a door;
- The Landlord intends to combine the two bachelor suites so that his son can have a two room unit;
- The Tenant's unit has a proper kitchen but the other bachelor unit does not have a legal kitchen;
- The other bachelor unit has a hotplate, rather than a proper stove;
- There is also an office in the residential complex, which the landlord's son will use as an office;
- The office does not have a fridge, stove, or any cooking facilities;
- The individual who was previously renting the other bachelor suite was also renting the office;
- The individual who was previously renting the other bachelor suite and office has vacated those units;
- The Landlord's son does not wish to move into the vacant bachelor suite and office, as the Tenant's unit is the only unit with a proper kitchen; and
- In the event the Landlord is granted an Order of Possession, the landlord would like it to be effective on July 15, 2023.

In support of the Application for Dispute Resolution, the Tenant stated that:

- Prior to being served with the notices to end tenancy, a third party was living in the other bachelor suite and another party was living in the office;
- Nobody is currently living in the office or the other bachelor suite;
- He has never been inside the office but he assumes it has cooking facilities;
- The other bachelor suite and the office are currently vacant;
- The Landlord's son could move into the vacant bachelor suite and office;
- He is paying below market rent;
- He believes the Landlord intends to re-rent the unit to a third party after increasing the rent; and
- He has not evidence to support his submission that the Landlord intends to re-rent the unit to a third party after increasing the rent.

### Analysis

Section 49(3) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that on March 01, 2023 the Landlord served the Tenant with notice of the Landlord's intent to end the tenancy pursuant to section 49(3) of the *Act*. On the basis of the undisputed evidence, I find that on April 24, 2023 the Landlord served the Tenant with a second notice of the Landlord's intent to end the tenancy pursuant to section 49(3) of the *Act*. I find that these notices were served for the same reason.

I find that the Landlord has established grounds to end this tenancy pursuant to section 49(3) of the *Act*, as his son, intends, in good faith, to move into the rental unit after he is married on July 01, 2023. I find that this submission is corroborated by an affidavit from the Landlord's son and a copy of an invitation to the son's wedding.

On the basis of the undisputed evidence that the Landlord's son is currently living with the Landlord, I find that the Landlord's submission that his son and new wife wish to move into the unit is highly credible.

As I have determined that the Landlord has grounds to end this tenancy pursuant to section 49(3) of the *Act*, I dismiss the Tenants' application to set aside the Two Month Notices to End Tenancy for Landlord's Use. As the application to set aside the Notices to End Tenancy has been dismissed and the Two Month Notice to End Tenancy for Landlord's Use complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

The Tenant contends that the Landlord intends to re-rent the unit to a third party for more rent. If that were the case, I would find that this Two Month Notice to End Tenancy for Landlord's Use of Property was served in bad faith.

Residential Tenancy Branch Policy Guideline 2A suggests the following:

*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.*

*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)).*

*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 demonstrate the landlord is not acting in good faith in a present case.*

*If there are comparable vacant 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 dishonest motive.*

I find that the Tenant has submitted insufficient evidence to establish that the Landlord intends to re-rent the unit to a third party. In most cases it is true that a long term tenancy will be paying rent that is well below market rent. That does not mean, in and of itself, that a landlord who ends a tenancy pursuant to section 49(3) is ending it because they want to re-rent it for an increased amount.

I find that the Tenant's submission that the Landlord intends to re-rent the unit to a third party is mere speculation and I cannot conclude that it establishes the Two Month Notices to End Tenancy for Landlord's Use of Property were served in bad faith.

Although the Tenant submits that the Landlord could combine the vacant office and the other vacant bachelor suite, I find that the Landlord has provided credible reasons for why that is not a suitable option. I am satisfied that the Landlord intends, in good faith, to combine the two bachelor suites for his son's use and I find that he has the right to do so.

I note that the Tenant has never been inside the office so I find his assumption that it has cooking facilities is less reliable than the Landlord's submission that it does not have cooking facilities.

Conclusion

I grant the Landlord an Order of Possession that is effective on **July 15, 2023**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and 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: June 23, 2023

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Residential Tenancy Branch