



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### Dispute Codes

File #910105413: CNL, OLC

File #910105791: OPL, FFL

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 49 cancelling a Two Month Notice to End Tenancy signed on March 11, 2023 (the “Two Month Notice”); and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

The Landlord files her own application seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the Two Month Notice; and
- return of the filing fee pursuant to s. 72.

C.M. appeared as the Tenant. M.H. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials, with the exception of the Landlord’s application, without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

With respect to the Landlord's application, the Landlord advises that she did not serve it. Arguably the relief sought by the Landlord in her application renders the application unnecessary as the Tenant's claim to cancel the Two Month Notice deals with the same issue. Given this and since the application was not served, I dismiss the Landlord's application without leave to reapply.

### Preliminary Issue – Tenant's Claims

Rule 2.3 of the Rules of Procedure requires that claims in an application be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

The primary issue in dispute is whether the Two Month Notice is enforceable. Given this, I find that the Tenant's claim under s. 62 of the *Act* is not sufficiently related to this issue such that I dismiss it with leave to reapply.

The hearing proceeded strictly on the issue of whether the Two Month Notice is enforceable.

### Issue to be Decided

- 1) Is the Two Month Notice enforceable? If so, is the Landlord entitled to an order of possession?

### Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

### *General Background*

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit in 2019. The Landlord took ownership of the property on or about February 1, 2020.

- Rent of \$1,500.00 is due on the first of each month.
- A security deposit of \$700.00 and a pet damage deposit of \$350.00 was paid by the Tenant.

I am provided with a copy of the tenancy agreement by both sides.

1) *Is the Two Month Notice enforceable? If so, is the Landlord entitled to an order of possession?*

Under s. 49(3) of the *Act*, a landlord may end a tenancy by giving tenant at least two months' notice when the landlord or their close family member intends, in good faith, to occupy the rental unit. Section 49(1) of the *Act* defines a close family member as an individual's parents, spouse, or child or the parent or child of that individual's spouse. When a tenant receives a notice issued under s. 49(3) of the *Act*, they may either accept the end of the tenancy or may file an application disputing the notice provided they do so within 15 days of receiving it as required under s. 49(8). If disputed, the respondent landlord bears the burden of proving the notice was issued in good faith.

I am advised by the Landlord that the Tenant was personally delivered with the Two Month Notice on March 11, 2023. The Tenant confirms this. I find that the Two Month Notice was served in accordance with s. 88 of the *Act* and received on March 11, 2023. Review of the information on file shows the Tenant filed her application on March 24, 2023, such that I find she disputed the Two Month Notice within the 15-day deadline established by s. 49(8) of the *Act*.

The Landlord explains that the Two Month Notice was issued after her sons, K.V.N. and C.V.N., approached her in late February 2023 asking to live within the rental unit. According to the Landlord, her sons were residing in another community but wished to live in the community in which the rental unit is located. I am told they secured employment in the rental unit's community and have been couch surfing as they cannot yet reside within the rental unit.

The Landlord's evidence includes a letter from the sons, which states that they could not find suitable and affordable accommodation elsewhere and asked the Landlord and L.V.N., their father, to live in the rental unit. They say they agreed to do so and pay rent of \$800.00 prospectively. The Landlord's evidence also includes a tenancy agreement between the Landlord and the sons signed March 8, 2023 with a start date of June 1, 2023.

The Tenant argues that the Two Month Notice was issued in bad faith after she refused to comply with a rent increase demand from the Landlord. The Tenant's evidence includes a series of text messages from the Landlord, one of which dated February 14, 2023 shows that the Landlord demanded rent of \$1,900.00 per month beginning on March 1, 2023.

The Tenant further argues that the Landlord is motivated by financial gain, highlighting that renters on a temporary work project living in the basement suite are paying \$3,000.00 per month. The Tenant's evidence includes a text message from the downstairs occupant.

The Landlord acknowledges that the rent increase demand of February 14, 2023 was improper and says that this was because she was unaware of her obligations under the *Act*. Though the Landlord acknowledges the sequence of events appear to be suspicious, she argued that it is merely a coincidence that her sons asked to live in the rental unit some weeks after the demand of February 14, 2023 was made.

Policy Guideline #2A provides the following guidance with respect to the good faith requirement imposed by s. 49:

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: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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.

There is no dispute that the attempted rent increase of February 14, 2023 is contrary to Part 3 of the *Act* that governs the imposition of rent increases. The increase was effective March 1, 2023 rather than the required three months, it was did not use the correct form, and, most significantly, the increase was well above the amount permitted by the Regulations.

The Landlord asks me to believe that her sons approached her to move into the rental unit mere weeks after a dispute over an unlawful rent increase with the Tenant. Though the Landlord argues it is purely a coincidence, I do not accept this. There is clear evidence of a dishonest motive, namely a dispute over rent. Given this, I question the veracity of the statement from the sons and the purported tenancy agreement signed on March 8, 2023. I find both documents to be self-serving and are an attempt to justify the issuance of the Two Month Notice after the rent increase dispute.

I am also concerned regarding an allegation raised by the Tenant at the hearing that the tenancy agreement provided to me had been altered by the Landlord after she had signed it. Specifically, the alteration pertains to utility payments, which was touched upon by the Landlord in the unlawful rent increase of February 14, 2023. The Landlord did not deny altering the tenancy agreement.

The Tenant's evidence includes correspondence with the Landlord from the spring of 2023 in which she asks for a copy of the tenancy agreement. The Landlord responded by arguing that it was no longer valid. I note that s. 13(3) of the *Act* requires a landlord to provide a copy of the tenancy agreement to the Tenant within 21 days of entering into the agreement.

Though not directly related to the matter at hand, the failure to provide a copy of the tenancy agreement, the allegation that it was no longer valid, and the alteration of the tenancy agreement by the Landlord without the Tenant's consent further raise doubts that the Landlord is truthful or acting honestly.

I find that there is evidence of dishonest motive in the form of the rent increase dispute. Correspondingly, I find that the Landlord has failed to demonstrate the good faith intention of her sons to occupy the rental unit.

I grant the Tenant's application and cancel the Two Month Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

### Conclusion

The Two Month Notice is cancelled. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's claim under s. 62 of the *Act* which was severed from the application is dismissed with 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 23, 2023

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Residential Tenancy Branch