



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 484028 BC LTD./PACIFIC COAST COMMUNITY  
RESOURCES and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL-4M  
                             OPL-4M, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on March 30, 2023. The Tenant applied to cancel a Four-Month Notice to End Tenancy for Demolition, or Conversion to Another Use, (the “Notice”) dated February 28, 2023.

The Landlord’s Application for Dispute Resolution was made on April 19, 2023. The Landlord applied to enforce a Four-Month Notice to End Tenancy for Demolition, or Conversion to Another Use, (the “Notice”) dated February 28, 2023, and to recover the filing fee paid for this application

An Agent for the Landlord and their Legal Counsel (the “Landlord”) as well as the Tenant and their Advocate (the “Tenant”) attended the hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties agreed that they exchanged the documentary evidence that I have before me.

The parties were also reminded that, in a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires that the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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.

### Issues to be Decided

- Should the Notice dated February 28, 2023, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Landlord entitled to the return for their filing fee for this application?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the Notice was served on February 28, 2023, by personal service to the Tenant. The Notice indicated that the Tenant was required to vacate the rental unit as of July 1, 2023. The reason checked off by the Landlord within the Notice was as follows:

- *Convert the rental unit to a non-residential use.*
  - *I have obtained all permits and approvals required by law to do this work.*  
*Please complete the information below:*
    - *City of Nanaimo, Business License – Residential Care Home*

The Landlord submitted that they purchased the property in 2020 and that it is their intent to convert the quadruplex, including the Tenant's rental unit to a 24-hour institutional care home. The Landlord submitted a copy of the business licence into documentary evidence.

The Tenant did not dispute that the Landlord was converting the rental unit into an institutional care home but stated that they thought the Landlord was required to get a permit first.

The Landlord submitted that no permit is required for this conversion, just the business license.

Both the Landlord and the Tenant agreed that the Tenant had paid the full rent for July 2023.

## Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that the Landlord served the Notice to the Tenant by personal service on February 28, 2023. Section 49(8) of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 30 days of receiving the Notice. Accordingly, the Tenant had until March 30, 2023, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on March 30, 2023, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2B address the "good faith requirement" as follows:

### **GOOD FAITH**

"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 are not trying 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 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 (section 32(1) of the RTA).

In some circumstances where a landlord is seeking to change the use of a rental property, a goal of avoiding new and significant costs will not result

in a finding of bad faith: *Steeves v. Oak Bay Marina Ltd.*, 2008 BCSC 1371.

If a landlord applies for an order to end a tenancy for renovations or repairs, but their intention is to re-rent the unit for higher rent without carrying out renovations or repairs that require the vacancy of the unit, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past for renovations or repairs without carrying out renovations or repairs that required vacancy, this may demonstrate the landlord is not acting in good faith in a present case.”

I have reviewed all of the documentary evidence before me, from both the Tenant and the Landlord, and I find that the Landlord has provided sufficient evidence to prove to my satisfaction, that they will be using this rental unit for the stated purpose on their Notice.

Therefore, I accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Consequently, I dismiss the Tenant’s application to cancel the Notice dated August 31, 2022.

Section 55(1) of the *Act* states the following:

***Order of possession for the landlord***

***55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if***

***(a) the landlord's notice to end tenancy complies with section 52***

***[form and content of notice to end tenancy], and***

***(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.***

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the *Act* and that the Landlord is entitled to an order of possession.

At the end of these proceedings, the Tenant’s advocate requested that, if the Tenant’s claim to cancel the Notice fails, that consideration be given to the effective date of the

order of possession. The Residential Tenancy Policy Guideline 54 address effective dates on orders of possession, stating the following:

**B. DETERMINING THE EFFECTIVE DATE OF AN ORDER OF POSSESSION**

“An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
  - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
  - e.g., If the tenant provides evidence of a disability or a chronic health condition.”

I have reviewed the totality of the documentary evidence and submission made during these proceedings and noted the Tenant has paid the rent for the month of July 2023. Therefore, I find that it is reasonable that this tenancy should end on the date in which the rent for this tenancy has been paid.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective not later than **1:00 p.m. on July 31, 2023**. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant’s application was submitted under a fee waiver, I find that the Landlord is not entitled to recover the filing fee paid for this application from the Tenant.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on July 31, 2023**. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 20, 2023

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Residential Tenancy Branch