



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      CNL, OLC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on February 25 2023, wherein the Tenant sought the following relief:

- to cancel a 2 Month Notice to End Tenancy for Landlord's Use, issued on February 14, 2023 (the "Notice");
- an Order that the Landlords comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation*, and/or the residential tenancy agreement; and,
- recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference on June 15, 2023 and July 10, 2023. The Tenant and the Landlord, R.D., called into the June 15 hearing as did Agents for both parties. When the hearing reconvened on July 10, 2023 only the Tenant's Agent, the Landlord's daughter in law, R.D. and the Landlord's Agent, G.S. called into the hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

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. No 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.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?
3. Is the Tenant entitled to recovery of 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/and is the Applicant, the Landlord presented their evidence first.

The Landlord, R.D. testified as follows. She confirmed that she and her husband, K.D, and her in-laws, S.D. and D.D. are owners of the rental property, which is a house with two units the upper/subject rental unit and a bachelor suite in the garage. The upper rental unit has two bedrooms and one bathroom.

The tenancy began in February 2022. The Tenant pays \$1,100.00 in rent.

R.D. stated that her inlaws are currently living with her and her husband and their 3 year old and 6 year old children in R.D.'s primary residence. R.D. stated that S.D. and D.D. wish to move to their own residence due to conflict with R.D. due to the use of a shared kitchen. R.D. stated that she wishes to have more privacy and not live with her mother in law as they argue about what to cook, etc.

R.D. further stated that her mother in law has health issues, including depression, which is why she can't live in the basement or anywhere that is dark. R.D. stated that

although the bachelor suite is available, her mother in law can't live in the bachelor suite because it only has one window and is very dark.

G.S. also noted that they have provided a doctors note which shows that the mother in law can't live in enclosed spaces, in the dark, or underground due to her depression.

In response the Tenant K.T. testified as follows. She confirmed she has lived at the rental property since February 15, 2022. She confirmed she pays \$1,100.00 in rent.

The Tenant confirmed she received the Notice in February of 2023. She stated that she does not believe that the Landlord's parents, S.D. and D.D. are moving into the rental property as she has received many "excuses" and notices from the Landlord such that she does not believe the Notice was issued in good faith.

In support the Tenant provided a text message dated May 27, 2022 from K.D. purporting to give a "1 month notice" on the basis his "partner" would be moving into the rental unit. A copy of this message was provided in evidence before me:

Fri, May 27 at 10:04 PM

I'm giving you one month notice.please find other basemnt for you ....please its my request because my owner patner moving from 1 july.. thanx ,,

In response to this text, the Tenant asked for a proper notice.

In response and on May 31, 2022 K.D. sent another text message indicating they had sold the property. Again a copy of that message was provided to me:

Tue, May 31 at 6:23 PM

Hello  
We have already given you a notice of one month. Because we sold this property.  
Thanks

Then on July 14, 2022 K.D. sent another text message indicating that the City in which the rental unit was located anted to schedule an inspection. At that time K.D. wrote that the basement needed to be “emptied” by midnight on August 14, 2022. Although that message was also provided to me, I will not reproduce it as identifying information relating to the Landlord’s name and City are contained in that message.

The parties then attended a hearing on December 19, 2022 on the Tenant’s Application for an Order that the Landlord give proper notice to enter the rental unit and to comply. The parties reached an agreement at that time. The Tenant submits that the Landlord was not complying and that is a reason why they are trying to end this tenancy.

The Tenant further noted that their main primary home has 8 bedrooms with 5 bathrooms. There are 10 parking spots. The Tenant noted there are two other basement suites in the house such that there are enough other places for S.D. and D.D. to live without displacing the Tenant. The Tenant’s agent also noted that the lower units, while basement suites, do not appear to be underground. In support the Tenant provided the most recent B.C. Assessment setting out the details of this property.

The Agent also noted that the Landlord has a third property, which is close to the rental property and the Landlord’s primary residence. This property is also 5 bedrooms and 3 bathrooms. It also has a suite in the garage. This property is where they have a partner who owns 25%, the rest is 75% to this family. The Tenant submits that this is also available for the inlaws to live without displacing her.

The Agent testified that she also went to this property, which is also tenanted. The Tenants do not want to be involved in the hearing. The Agent submitted that this property is actually closer to the Landlord, and was only just recently purchased.

The Agent submits that there are three properties, and if the basement is an issue, the Landlord has other options to house their inlaws. The agent further noted that none of the other basements are underground, and are walk out level such that they are acceptable.

The Agent submitted that they are just “bothering the tenant so they can get their way”. She noted that in the recent months there have been issues around parking, such that the Landlord are trying to restrict visitor parking, and the wifi. She stated that this was never an issue before but is now. She stated that the ulterior motive is that they simply want to end this tenancy.

In response the Landlord's Agent testified as follows. He stated that the Landlords do own three properties. He noted that the third property is owned with a partner, and the partner is unwilling to have the parents move into that property because the sole purpose of that property is for investment purposes. He stated that the one they are residing in has two basement suites, and they do not want to move into the same property as their son and daughter in law.

In terms of the Landlord advising they had sold the property, the Agent confirmed that it was a year ago, in May of 2022, that the Landlords were attempting to sell the property.

### Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Act*. Section 49 of the *Act* allows a landlord to end a tenancy if the landlord intends, in good faith, to occupy the rental unit, or a close family member intends, in good faith, to occupy the unit.

*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.

In this case the evidence confirms that within 8 months of issuing the Notice, and over the course of several months, the Landlord sent the Tenant repeated text messages attempting to end the tenancy. In one such message the Landlord wrote their partner intended to move in. In another the Landlord wrote they had sold the property. In another the Landlord suggested the property needed to be emptied to comply with an inspection by the municipality. While these text messages were sent a number of months before the Landlord served the formal 2 Month Notice to End Tenancy for Landlord's Use, I find they support a finding the Landlord has an ulterior motive for ending this tenancy.

The evidence also confirms that less than two months before issuing the Notice the parties attended an arbitration before the Residential Tenancy Branch on a Tenant's Application for an Order that the Landlord comply with the *Act* in terms of entering the rental unit. On balance I find it likely the Landlord issued the Notice in response to this hearing as the Landlord was displeased with the result.

The Landlords submit that they wish to have their inlaws move into the rental unit to reduce conflict in their home as they currently live together and share a kitchen. While this may be preferable, I find that there are other options available which would satisfy their need for distance, without displacing this Tenant and ending the tenancy. I am persuaded by the Tenant's evidence and submissions that there are comparable above ground rental units owned by the Landlords which the Landlords' inlaws could occupy. While they may not be the preferred unit, I find these options acceptable even when considering her mother in law's health concerns and stated need to create distance from the Landlords.

For these reasons, I grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

I did not hear submissions on the Tenant's Application for an Order that the Landlord comply with the legislation or the tenancy agreement. I therefore dismiss that portion of the claim with leave to reapply.

Having been successful in their Application I find the Tenant is entitled to recover the filing fee. She may reduce her next months' rent by \$100.00 pursuant to section 72 of the *Act*.

### Conclusion

The Tenant's request for an Order canceling the Notice and recovery of the filing fee is granted.

The Tenant's request for an Order that the Landlord comply with the *Act*, the *regulations*, and the tenancy agreement 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: July 13 2023

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Residential Tenancy Branch