



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) by the tenant to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2023 (Two Month Notice) and many other unrelated disputes, which were severed under Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 2.3.

The parties were affirmed and were advised that I would only be considering the Two Month Notice and the filing fees. As the tenant filed two applications and paid two filing fees, I decline to grant the filing fee for the second application as I find it was not required as the tenant had the ability to amend their first application and failed to do so. Therefore, I will only consider one filing fee for the remainder of this application.

The parties and witnesses listed on the cover page of this decision attended the hearing. As both parties confirmed that they had been served with documentary evidence and had the opportunity to review that evidence, I find the parties were sufficiently served in accordance with the Act.

The parties confirmed their respective email addresses. The parties were advised that the decision will be emailed to both parties.

### **Issues to be Decided**

- Should the Two Month Notice be cancelled?
- If yes, should the tenant recover the cost of the filing fee?
- If no, should the landlord be granted an order of possession?

### Background and Evidence

A copy of the original tenancy agreement was submitted in evidence and began April 1, 2019, before the landlords assumed the tenancy through purchase of the rental property. Monthly rent is \$1,000 per month which is reduced by way of the tenancy agreement to \$900 per month as follows:

<input checked="" type="checkbox"/> Additional information:	\$1000.00 monthly reduced to \$900 to reflect property upkeep ( lawns / maintenance co-ordination)
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The Two Month Notice is dated February 28, 2023, and has an effective vacancy date listed as April 30, 2023. The tenant testified that the received the Two Month Notice on March 16, 2023. The tenant disputed the Two Month Notice on March 30, 2023, which is within the 15 days permitted under section 49 of the Act.

The landlords were asked who they served the Two Month Notice, and replied by “registered mail”, which I find was incorrect as there was no tracking number and only a stamp on the envelope. The landlords were under the impression that adding a stamp to the envelope makes it registered mail, which is incorrect. As the landlords failed to serve the Two Month Notice by registered mail, I accept the tenant’s testimony that they received the Two Month Notice by regular mail on March 16, 2023, which I find is consistent with the photo of the envelope submitted by the tenant.

The reason listed on the Two Month Notice states:

**Reason for this Two Month's Notice to End Tenancy (check the box that applies)**

☒ The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

☐ The landlord or the landlord's spouse

☐ The child of the landlord or landlord's spouse

☒ The father or mother of the landlord or landlord's spouse

### Landlord's evidence

The landlord testified that parents of the landlord M.D. and D.D., both of whom are 68, plan to move from Timmins, Ontario to live in the rental unit, which is one-half of a duplex in Prince George. The landlords confirm that the landlords reside in Dawson

Creek and that it is the plan for the parents of the landlords to move closer to help the landlords with their children and to be closer to other family members.

The landlords testified that M.D. And D.D. own a couple of properties in Timmins, Ontario and also buy places in Florida, USA to fix them up to sell. The landlords testified that the only rental properties owned by the landlords is both sides of the duplex, in which the subject property makes up one-half.

### *Tenant's evidence*

The tenant testified that there have been ongoing plumbing issues and that a roof leak continues to cause black mould in the rental unit. The tenant raised the issue of good faith both in their applications and at the hearing. The tenant questioned why the landlord would offer for their parents to live in a rental unit with black mould.

The tenant submitted a text where the tenant asks about what will be done about the water leak and the landlord replies that they "had a plan" and following that text the tenant was served with the Two Month Notice.

The landlord responded to the tenant by stating the tenant has a laundry list about 20 pages long of things they want addressed and that the tenant has been talking about the landlord with the neighbours. The landlord claims they are unable to enter the rental unit as the tenant either does not answer the door or claims they are away in the bush.

The landlord confirmed that they have not given written notice to enter the rental unit nor has the landlord entered the rental unit themselves to confirm the condition of the rental unit. The landlord stated that a bottle of bleach can deal with black mould no problem. The landlord claims they are relying on feedback from a contractor in January 2023 in terms of the condition of the rental unit. The invoice from a contractor is dated January 19, 2023.

The tenant submitted a text from the landlord indicating that the landlord is requesting \$1,000 for rent although the tenancy agreement reduces monthly rent at \$900 to reflect property upkeep listed on the tenancy agreement and noted above. The same text does not indicate that the landlord is alleging that the tenant is failing to provide upkeep of the property.

### *Witness evidence*

Before either witness was called to testify, all parties were advised on witness etiquette, and that both witnesses will be called separately and could not be within earshot of each other.

M.D. was affirmed and testified that they have plans to live in the rental property and confirmed that they have been in BC for 1.5 months. M.D. confirmed that they own a fourplex in Timmins, Ontario that they rent plus and additional rental property in addition to the 1,400 square foot home they own and reside in. M.D. also confirmed that they are purchasing a modular home in Florida with the intention to sell it.

M.D. stated that their son has two kids and a wife, and they just feel like it is time to come help them for the summer, but that they do go away for the winter.

The landlord's had no questions for M.D. The tenant asked why M.D. feels like they need to move to Prince George, to which M.D. that they are very busy, and they want to help out with the kids. The tenant asked how long M.D. and her husband go to Florida for, and M.D. confirmed 4 months. The tenant asked if M.D. would stay for the school year and M.D. confirmed they would.

D.D. was called to testify and was affirmed. Within just a couple of questions D.D. stated "my wife already answered these questions" at which point D.D. was excused for failing to comply with not being within earshot of M.D. when M.D. was testifying. The testimony of D.D. will be given no weight as a result as their testimony has been tainted.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Firstly, regarding the witness testimony, as indicated above, I afford the testimony of D.D. no weight as their testimony was tainted by listening to M.D. testify before them. Secondly, I find the testimony of M.D. was contradictory as they claim they would be there for the kids' school year yet also admitted they will be in Florida for 4 months of the year, which is not consistent with a typical school year.

In addition, RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member (PG 2A) states in part, which applies:

## B. 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 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.

[reproduced as written]

I find the landlord has failed to provide sufficient evidence of good faith for several reasons. Firstly, is the landlord comment of the tenant having a “laundry list of items 20 pages long.” Secondly, is the landlord attempting to increase rent to \$1,000 even though the tenancy agreement states it is \$900 with property upkeep and maintenance. Thirdly, is the landlord not conducting an inspection of the rental unit to confirm the existence of black mould before offering the place to the parents of the landlord, which I find is not reasonable. While the landlord claims they are relying on feedback from a contractor in January 2023 in terms of the condition of the rental unit, I find that at the very least, to show good faith the landlord would have inspected the rental unit to address the black mould concerns prior to issuing a Two Month Notice, which was not

done. In addition, the Two Month Notice was issued over one month after a contractor's invoice dated January 19, 2023. I also find the landlord stating a bottle of bleach will take care of it is flippant and not a reasonable response without knowing the actual scope of the black mould inside the rental unit.

The landlord must not have an ulterior motive and I find that the landlord has failed to provide sufficient evidence of no ulterior motive in this matter. Consequently, **I cancel** the Two Month Notice due to lack of good faith. The Two Month Notice dated February 28, 2023, is of no force or effect as a result.

**I ORDER** the tenancy to continue until ended in accordance with the Act.

This order is made pursuant to section 62(3) of the Act.

As the tenant's application had merit, I find that the tenant is entitled to monetary compensation pursuant to section 72 of the Act, in the amount of **\$100** for the filing fee. I authorize the tenant to a **one-time rent reduction in the amount of \$100** from a future month of rent, in full satisfaction of the tenant's recovery of the cost of the filing fee.

As noted above, I do not grant more than one filing fee as the tenant had the ability to amend one application and did not do so.

### Conclusion

The Two Month Notice issued dated February 28, 2023, by the landlord is cancelled and is of no force or effect due to a lack of good faith.

The tenancy has been ordered to continue until ended in accordance with the Act.

The tenant may deduct \$100 from a future month of rent in full satisfaction of the filing fee as noted above.

This decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2023