



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNL, FFT**

### **Introduction**

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 6, 2023 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated April 1, 2023; and
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 1, 2012, before the current Landlord purchased the rental property in 2016. Currently, the Tenant pays rent in the amount of \$1,250.00 which is due to the Landlord on the first day of each month. The Tenant paid a security and a pet damage deposit, each in the amount of \$600.00 which the Landlord continues to hold. The tenancy is still ongoing.

The Landlord testified that she served the Tenant with the Two Month Notice dated April 1, 2023 with an effective date of June 30, 2023, on April 1, 2023. The Tenant confirmed receipt on the same date. The Landlord's reason for ending the tenancy on the Two Month Notice is;

*"The rental unit will be occupied by the Landlord or the spouse"*

The parties testified and agreed that the rental unit is a separate dwelling unit located on the rental property. The parties agreed that the Landlord resides in the main house located on the rental property. The parties agreed that the Landlord currently occupies the upper portion of the main house with her son. The parties agreed that the lower portion of the main house consists of a two-bedroom unit and a one bedroom unit that is used for short term vacation rentals.

The Landlord stated that she is in a committed relationship and that her partner intends on moving into the main house to reside with the Landlord and the Landlord's son. The Landlord stated that they plan on having a child together. The Landlord stated that she works from home and is needing more space given that her family is growing and is running out of room in the upper portion of the main house.

The Landlord stated that she is seeking to expand her space for the purpose of setting up a studio to conduct her work from home. The Landlord provided an affidavit and

pictures of her living space to show the cluttered work environment that she is currently experiencing. The Landlord stated that she required a space that is well lit and is quiet to conduct her work.

The Landlord acknowledged that the two-bedroom unit in the basement of the main house was vacant from February 2023 until she signed a tenancy agreement with new occupants on April 27, 2023 for a start of tenancy effective June 1, 2023. The Landlord stated that the other one-bedroom unit is listed as a short-term vacation rental. The Landlord stated that she has family stay there occasionally but that there is no kitchen. The Landlord stated that the units in the basement do not meet her needs given the spaces are not well lit and she would hear noise from the upper portion of the main house.

The Landlord stated that the rental unit would be ideal given it is a detached space from the main house and is well lit. The Landlord stated that she would use this space for work purposes. As such, requires vacant possession.

The Tenant disputed the Two Month Notice as she feels as though it was served in bad faith. The Tenant stated that if the Landlord requires more space, then they had an opportunity to reclaim the two-bedroom unit in the basement while it was vacant from February to June 2023, rather than re-renting the unit. Furthermore, the Tenant stated that the Landlord is at liberty to use the one-bedroom unit that is vacant and used for short-term vacation rentals, instead of ending her tenancy.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord served the Tenant with the Two Month Notice on April 1 2023. The Tenant confirmed having received the Two Month Notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to the Residential Policy Guideline 2A

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.

In this case, I accept that the Landlord requires more space for her growing family. However, at the time of serving the Two Month Notice to the Tenant, the Landlord had a two-bedroom unit in the basement of her home that she was at liberty to reclaim. I accept that the Landlord re-rented this space as of June 1, 2023 instead. I accept that the Landlord continues to have access to a one-bedroom unit in the basement of the main house that they currently use for a short-term vacation rental.

I find that the Landlord had other comparable units available to them at the time of serving the Two Month Notice to the Tenant. I find that the Landlord could have used these spaces rather than ending the Tenant's tenancy. I do not accept that the Landlord was prevented from using these units as they are not well lit or are quiet.

In light of the above, I cancel the Two Month Notice, dated April 1, 2023. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant has been successful, I find she is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from one (1) future rent payment.

Conclusion

The Tenant's application is successful. The Two Month Notice issued by the Landlord dated April 1, 2023 is cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenant is entitled to deduct \$100.00 from one (1) future rent payment for recovery of the filing fee.

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 11, 2023

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Residential Tenancy Branch