



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

On April 27, 2023, the Tenants made an Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "*Act*"), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, and J.L. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Records indicate that the Notice of Hearing package was made available for the Tenants on May 1, 2023, and Rule 3.1 of the Rules of Procedure (the "Rules") require that this package be served to the Landlord within three days. Tenant A.V. advised that they served this package, along with their documentary evidence, to the Landlord by registered mail approximately 20 days late as they were out of country. J.L. was provided with multiple opportunities to make submissions about how this late service was prejudicial to the Landlord. However, he did not provide any submissions that demonstrated any prejudice to the Landlord. In addition, as there was sufficient time for the Landlord to respond to this claim, I am satisfied that the Landlord has been duly served the Tenants' Notice of Hearing and evidence package. As such, I have accepted the Tenants' evidence and will consider it when rendering this Decision.

J.L. advised that the Landlord's evidence was served to the Tenants by email sometime in June or July 2023, but he did not have consent to exchange documents in this manner. A.V. confirmed that they received the Landlord's evidence by email on June 18, 2023, and despite not having consent to exchange documents by email, she stated that there was no prejudice to them. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2021, that the rent was currently established at an amount of \$2,600.00 per month, and that it was due on the first day of each month. A security deposit of \$1,300.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that the Notice was served on or around April 24, 2023, by email and by being placed in the Tenants' mail slot. The reasons the Landlord served the Notice are because "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)." As well, the Landlord indicated that it would be "The landlord or the landlord's spouse", "The child of the landlord or landlord's spouse", and "The father or mother of the landlord or landlord's spouse" that would be specifically occupying the rental unit. The effective end date of the tenancy was noted as June 30, 2023, on the Notice.

There were some discrepancies on the Notice, and J.L. advised that the date signed of March 7, 2023, was when he prepared the Notice, and he did not think about changing the date when he actually served it. As well, he testified that there was no reason that he did not fill out the address for the Tenants to move from on the Notice.

A.V. advised that it is their position that this Notice is invalid because the date that J.L. indicated the Notice was signed would then have made it impossible for them to have disputed the Notice within the required 15-day timeframe. She also acknowledged that they were aware of the address they were required to move from, despite it not being completed by J.L. on the Notice.

When addressing the reasons the Notice was served, J.L. advised that he had no explanation for why all three of the persons eligible to move in were indicated on the Notice, but he testified that these were checked off just "in case". He initially testified that he did not know when the Landlord's parents would move to Canada. However, later in the hearing, he contradictorily advised that he was informed a day prior to the hearing that the Landlord's parents would be moving to Canada from China, but then again contradicted this by stating that he was informed many months ago that they would be arriving.

He testified that the Landlord has a big family, and he stated that "I think they will all move in." He submitted that the Landlord lives in the US for most of the year, and only intends to live in Canada sporadically. He also indicated that the Landlord's parents live with the Landlord as well, which was contrary to his earlier inconsistent testimony.

He then advised that the Landlord owns a property in Vancouver that the Landlord's daughter occupies, and that it is the Landlord's intention for the daughter to move into the rental unit also. He testified that the Landlord initially wanted to move into the rental unit after the sale of this other home; however, the Landlord now wants to move into the rental unit before his other property sells as it is easier to sell when it is vacant. He stated that "I believe" that it was the Landlord's good faith intention to occupy the rental unit when the Notice was served.

A.V. advised that when they originally entered into this tenancy, the rental unit was not livable due to the manner with which the previous tenants lived. As such, it was agreed that the rent would be lowered in lieu of the Tenants bringing the rental unit up to a habitable condition. She referenced the addendum, which outlined all of the deficiencies in the rental unit at the start of the tenancy. She testified that the rental unit is old, and it is unlikely that the Landlord would truly want to occupy it. As well, she indicated that the Landlord's other property has been taken off the market as of August 1, 2023, and the Landlord has no idea when they will sell that house.

J.L. advised that the Landlord's other property had been listed for sale for a long time and that he was not aware this listing was removed. He speculated that this listing was "maybe expired", and then he contradictorily claimed that it had expired as of July 30, 2023.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purposes on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit. I also find it important to note that Policy Guideline # 2A discusses good faith and states that:

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... 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... 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.

In addition, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence and testimony before me, while I have testimony from J.L. about the Landlord's intention to move into the rental unit, I note that it was indicated on the Notice that it would be specifically "The landlord or the landlord's spouse", "The child of the landlord or landlord's spouse", **and** "The father or mother of the landlord or landlord's spouse" who would occupy the rental unit.

Regarding the reason of the Landlord or Landlord's spouse occupying the rental unit, J.L. testified that the Landlord does not even live in the country for the majority of the year, and that it was the Landlord's intention to live in Canada sporadically. Firstly, I note that J.L. provided no reason for why the Landlord even wanted to move back from wherever they lived, and into the rental unit. Furthermore, there was no documentary evidence submitted of the Landlord's desire or reasoning for wanting to occupy the rental unit. The only reason provided by J.L. was that it would be easier to sell the Landlord's other property if it were vacant. Given that the Landlord does not live in the country, and only intends to live in Canada sporadically, I am suspicious that it is the Landlord's actual intention to move back and live in the rental unit as a primary residence. Moreover, in the Landlord's documentary submissions, it is noted that "The landlord has the real intent to move in this property **after** [emphasis added] she sells her own home..." As this statement is in direct contradiction to J.L.'s testimony that it was the Landlord's intention to move into the rental unit in order to make it easier to sell the other property, I find that this causes me to doubt the reliability of J.L.'s testimony.

In addition, J.L. also testified that the Landlord's daughter lives in this other property and that it was the Landlord's intention for her to also occupy the rental unit. However, there has been no documentary evidence submitted to confirm that she lives in this other property. Furthermore, there has been no documentary evidence submitted to explain

the daughter's living situation and why it would be necessary for her to move into the rental unit, other than it would be allegedly easier to sell the other property. As I have already determined above that I am skeptical by J.L.'s inconsistent testimony about the Landlord's intention of selling the other property before or after occupying the rental unit, I find that the unsupported submissions of the daughter moving into the rental unit cause me to doubt further the credibility of J.L.

Finally, regarding his testimony that it was the Landlord's intention to have the parents of the Landlord or Landlord's spouse move into the rental unit, I find it important to note that his testimony was wildly contradictory about where these parents lived. As well, there was no documentary evidence submitted that there was any actual plan for these people to move from wherever they lived, and into the rental unit.

In considering the testimony and evidence before me, it was clearly evident from J.L.'s testimony throughout the hearing that the only thing that was consistent with his submissions was that his testimony was wholly inconsistent. Given the deficiencies on the Notice where J.L. failed to fill out a section or correctly date when the Notice was signed, I find this to be consistent with the careless manner that this tenancy appears to have been managed by himself. Moreover, generally a landlord would not have three different sets of persons that would be wanting to move into the rental unit. While this scenario is not beyond the realm of possibility, J.L. has not submitted any documentary evidence of any of these persons actually having tangible plans of moving into the rental unit. Furthermore, as he testified that all three of these reasons were checked off just "in case", I find that this further supports a conclusion that this was an intentional attempt to increase the Landlord's odds of ending the tenancy in the hopes that at least one suggested purpose would be accepted.

When assessing J.L.'s testimony, I do not find it in any way to be reliable or truthful, as it was clearly evident that his submissions were more likely than not to have been poorly crafted in an effort to say anything that may possibly be accepted as a legitimate reason for ending the tenancy with this Notice. While he suggested that there were some language difficulties that would account for his varying testimony, it was entirely evident, as noted above, that he was merely suggesting anything that would hopefully be perceived as plausible in an attempt to justify ending the tenancy. As there was no documentary evidence to support any of his submissions, I find that I can reasonably conclude that his testimony carries no weight and that he lacks credibility on the whole.

Given all the doubts created by J.L.'s dubious and inconsistent testimony, I am satisfied that his submissions were fabricated in order to provide a false narrative, and to portray

a set of scenarios which did not exist. As such, I do not find J.L. to be credible as he failed to provide consistent, logical, compelling, or persuasive testimony or documentary evidence. As the burden is on the Landlord to prove why the Notice was served, I am not satisfied by J.L.'s testimony that this Notice was served in good faith as it is clear that there were likely ulterior motives for serving the Notice.

Based on my assessment of the evidence and testimony before me, I am not satisfied, on a balance of probabilities, that the Landlord served the Two Month Notice to End Tenancy for Landlord's Use of Property in good faith. As such, I find that this Notice dated March 7, 2023, but served on or around April 24, 2023, is cancelled and of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month's rent.

### Conclusion

Based on the above, I hereby Order that the Two Month Notice to End Tenancy for Landlord's Use of Property dated March 7, 2023, but served on or around April 24, 2023, to be cancelled and of no force or effect as well.

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: August 23, 2023

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Residential Tenancy Branch