



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on August 17, 2023. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the Notice).

The Landlord was present at the hearing with her agent (collectively referred to as the Landlord). The Tenant was present at the hearing. Both parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's Notice of Hearing and documentary evidence and did not take issue with the service of these documents. The Tenant confirmed receipt of the Landlord's evidence package. I find both parties sufficiently served their documentation for the purposes of this hearing.

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(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Tenant acknowledged getting the Notice on April 17, 2023. A copy of the Notice was provided into evidence and it lists the following grounds to end the tenancy:

*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).*

- *The Landlord or the Landlord's Spouse*

The Tenant explained that this rental unit consists of a single bedroom in a shared house. The Tenant explained that there are a couple other Tenants living in and sharing the rental unit, one of which is the Landlord's daughter, and another individual/friend, both with separate tenancy agreements.

The Landlord stated that she wants to move into this room in the house because she wants to be closer to her mother, who lives a block away from this rental unit. The Landlord stated that her mother is in poor health, and since her father passed away last year, she has to be closer by to help care for her. The Landlord stated that she is currently living with her ex-husband at another house. The Landlord stated that this rental unit is only one block from her mother.

The Landlord also pointed to a "mutual agreement" she says the Tenant agreed to. A copy of the email chain was provided into evidence. The Tenant does not agree that an agreement was reached to end the tenancy.

The Tenant stated that she is good friends with the Landlord's daughter, who also lives in the rental unit. The Tenant stated that there was an incident with the Landlord's daughter just before the Notice was issued. The Tenant stated that the Landlord's daughter came to her and confided in her about her pregnancy, and the two ended up having a disagreement later that day. The Tenant stated that a couple of days later, the Landlord's daughter stated she wanted her out of the rental unit, due to their disagreement. Shortly thereafter, the Landlord issued a 2 Month Notice saying she was going to move in. The Tenant stated it is highly suspicious, given the timing of her argument with the Landlord's daughter.

The Tenant also stated that she confirmed with the other Tenant living in the rental unit that the Landlord's daughter had told her that the 2 Month Notice was not based on fact, and that it was merely to get rid of the Tenant. The Tenant provided a copy of a text

message from the other Tenant confirming that the 2 Month Notice wasn't issued in good faith. The Tenant finds it odd that the Landlord would choose to try to move into the shared suite with other Tenant's when she could easily move into the basement suite, which is separate.

The Landlord denies that it is being issued in bad faith.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that she intends in good faith to occupy the unit (as she has indicated on her 2-Month Notice).

I acknowledge that there has been degradation in the relationship between the Tenant and the Landlord's daughter, who resides in the same rental unit as the Tenant (but not under this tenancy agreement). The Tenant is alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because of interpersonal issues.

Once the Landlord's good faith intentions are called into question, the burden of proof rests with the Landlord to demonstrate that she, in good faith, intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2A states the following:

#### **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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.*

[...]

*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.*

I have considered the testimony and the evidence on this matter, in totality, and I note the Landlord is seeking to end this tenancy because she states that she wants to be closer to her mother, who lives close to this rental unit, and to get out of the house with her ex-husband, and not because of interpersonal conflict with the Tenant. I accept that, based on the evidence and testimony, that the Landlord's mother has some health challenges. However, I note the good faith intentions of the Landlord have been called into question by the Tenant, given the escalating dysfunction between the Tenants sharing the rental unit leading up to the issuance of the Notice.

Since the good faith intentions of the Landlord has been called into question, the Landlord bears the burden of proof to show that she truly intends to occupy the rental unit, and that there is no ulterior motive for ending the tenancy.

In this case, the Landlord must demonstrate that the escalating conflict between her daughter and the Tenant did not substantially contribute to her issuing the Notice. I note the Tenant provided some text message history. It appears this text message was between the Tenant and the other person living in the suite. The text message confirms that this other person living in the suite witnessed the Landlord's daughter say that her mother was not moving in, and that the "whole thing was a lie." This was on March 20, 2023. The 2 Month Notice was issued shortly thereafter, which I find it highly suspicious timing, in terms of good faith intentions. Although I accept that the Landlord's mother lives close by to the rental unit in question, and that she is in poor health, I am not satisfied the Landlord has sufficiently rebutted this matter and explained her good faith intentions.

I find that the Landlord has not provided sufficient evidence to support her good faith intentions, especially given the pre-existing conflict, leading up to the Notice.

Further, I have reviewed the email messages provided into evidence by the Landlord and I do not find it amounts to a mutual agreement. It appears the parties were getting close to an agreement, but things went sideways after the parties could not agree to the payments, and timing of the payments. I do not find the parties conclusively agreed on ending the tenancy via those emails.

Therefore, the Tenants' application is successful and the Notice received by the Tenant in April of 2023, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

Pursuant to section 72, the Tenant may deduct the cost of the filing fee (\$100.00) from one future rent payment.

Conclusion

The Tenants' application is successful. The Notice is cancelled.

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 22, 2023

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Residential Tenancy Branch