



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

Tenant: **CNL, LRE, FFT**

Landlord: **OPL, FFL**

### **Introduction**

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (Act) for:

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under sections 49 and 62 of the Act;
2. An Order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70 of the Act; and,
3. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Landlord's cross application pursuant to the Act for:

1. An Order of Possession for a Two Month Notice under sections 49, and 55 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, the Tenant, and support attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord personally served the Two Month Notice on April 30, 2023. The Landlord uploaded a witnessed proof of service form #RTB-34 attesting to this service. The Tenant confirmed receipt of the Two Month Notice. I find that the Two Month Notice was served on the Tenant on April 30, 2023 pursuant to section 88(a) of the Act.

The Tenant testified that she served the Landlord with the Proceeding Package and some evidence for this hearing on May 20, 2023 by Canada Post registered mail. The Tenant referenced the Canada Post registered mail tracking number as proof of service. The Landlord confirmed receipt. I find that the Landlord was deemed served with the Tenant's Proceeding Package five days after mailing them, on May 25, 2023, in accordance with sections 89(1)(c) and 90(a) of the Act.

The Tenant served additional evidence on the Landlord by Canada Post registered mail on August 17, 2023. The Tenant referenced the Canada Post registered mail tracking number as proof of service. The Landlord confirmed receipt. I find that the Tenant's additional evidence was deemed served on the Landlord on August 22, 2023 in accordance with sections 88(c) and 90(a) of the Act.

The Landlord served their Proceeding Package on the Tenant on May 28, 2023 by placing the document in the Tenant's mailbox. The Landlord uploaded a witnessed proof of service form #RTB-55 attesting to this service. The Tenant confirmed receipt. I find that the Landlord's Proceeding Package was deemed served on the Tenant on May 31, 2023 pursuant to sections 89(2)(d) and 90(d) of the Act.

The Landlord served their evidence on the Tenant by Canada Post registered mail on August 23, 2023. The Landlord referenced the Canada Post registered mail tracking number as proof of service. The Tenant stated she did not see the Canada Post notice in her mailbox. I find that the Landlord's evidence was deemed served on the Tenant on August 28, 2023 in accordance with sections 88(c) and 90(a) of the Act.

### Issues to be Decided

For the Tenant:

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?
2. Is the Tenant entitled to an Order to suspend or set conditions on the Landlord's right to enter the rental unit?
3. Is the Tenant entitled to recovery of the application filing fee?

For the Landlord:

1. Is the Landlord entitled to an Order of Possession for the Two Month Notice?
2. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties uploaded their tenancy agreement which stated that this tenancy began as a fixed term tenancy on July 1, 2020. Two subsequent fixed term tenancies began on July 1, 2021, and July 1, 2022. The last fixed term ended on June 30, 2023, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,300.00 payable on the first day of each month. The tenancy agreement shows that a security deposit of \$1,150.00 and a pet damage deposit of \$500.00 were collected at the start of the tenancy.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the Landlord or the Landlord's spouse will occupy the unit. The effective date on the Two Month Notice was June 30, 2023.

The Landlord said he is going through a divorce, and he needs to move back into his rental unit. The Landlord stated he currently lives in a rental unit, and he must be out by the end of September 2023. His current landlords have let him extend his tenancy, because he thought the Tenant would be out of his rental unit at the end of June 2023. The Landlord said he has moved some of his things to a storage locker, and if he does not have his place to move back into, he will just do couch surfing at his friend's place.

The Tenant does not believe that the Landlord has the good faith intention to move back into the rental unit. She stated that before, the rental unit was used as an Airbnb.

The Tenant stated that the Landlord's address on the Two Month Notice is the same address as on the tenancy agreement, and this differs from the address that the Landlord provided in his verbal testimony. The Tenant uploaded a Title Search Print document which shows that the Landlord is the registered owner in fee simple of this property. The Title Search Print document does not show any pending transfers of the title of this property.

The Tenant pointed to some text messages where the Landlord is telling her that the:

*[rental unit] strata fee has gone up to \$700 a month. Plus insurance. I'm losing money for keeping that property  
So at least if I move back, I do t have to pay for my rent.*

*...I will need to get back to you on if it's possible for me to let you extend one more month to end of July, as I have already booked with the contractor in July to go in for reno for myself to move back. ...*

The Tenant argued that this indicates that there is a financial motive/gain to the Landlord to evict her. The Tenant agreed that no one has been by her rental unit to take measurements for any renovations. The Landlord has not provided any evidence that he is divorcing or is doing renovations in the rental unit.

The Landlord replied that the title of the property with the address from the Two Month Notice and the tenancy agreement will be transferred to his ex-partner. The Landlord testified that Airbnb rentals are not allowed at the rental unit, the strata does not permit short term rentals. The Landlord has had conversations with his landlord's contractor, and the plan is that this contractor will be going into the rental unit and painting it before the Landlord moves back in.

The Landlord agreed he is in a financial bind, and when he moves back into this rental unit, he will not be going deeper into the hole each month.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

I find the Tenant was personally served with the Two Month Notice on April 30, 2023. I find that the Two Month Notice complied with the form and content requirements of section 52 of the Act. The Tenant applied for dispute resolution on May 14, 2023 which was within the 15 days after receiving the Two Month Notice.

Section 49 of the Act is the relevant part of the legislation in this application. It states:

**Landlord's notice: landlord's use of property**

**49** ...

(2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

(a) *for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be*

(i) *not earlier than 2 months after the date the tenant receives the notice,*

...

(3) *A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

...

(7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and,...*

(8) *A tenant may dispute*

(a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*

...

The Tenant made a claim that she did not believe the Landlord was acting in good faith. RTB Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, assists parties to understand issues that are likely to be relevant in this regard.

**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. ...*

*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.*

...

*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.*

The Landlord testified that he is in the process of a divorce. When the divorce proceedings are ended, he stated that the property of which he holds title will be transferred to his ex-partner. He has been living at different accommodations than the address noted on the tenancy agreement and the Two Month Notice. The Landlord agreed he is in a financial bind, and when he moves back into this rental unit, he will not be going deeper into debt each month.

I do not find that the Landlord has an ulterior purpose for ending this tenancy. I find the Landlord has proven on a balance of probabilities that he does not intend to defraud or deceive the Tenant, and that he honestly intends to move into the rental unit, and consequently I dismiss the Tenant's application in its entirety, and specifically to cancel the Two Month Notice without leave to re-apply.

As this tenancy has ended based on the Two Month Notice served, I caution the Landlord to regard section 51 of the Act regarding: **Tenant's compensation** after a section 49 notice, which comes into play when the Landlord does not fulfil the stated purpose in their notice.

As the Tenant was not successful in her application, I must now consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

***Order of possession for the landlord***

- 55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I previously found that the Two Month Notice submitted into documentary evidence complies with section 52 of the Act and I uphold the Landlord's Two Month Notice. I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

Having been successful, I find the Landlord is entitled to recover the application filing fee paid to start his application, which I order may be deducted from the security deposit held pursuant to section 72(2)(b) of the Act.

**Conclusion**

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 27, 2023

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Residential Tenancy Branch