



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

For the Tenant: CNL, FFT

For the Landlords: OPL, FFL

### **Introduction**

1. Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear applications regarding the above-noted tenancy.
2. The Tenant's application pursuant to the Act is for:
  - cancellation of two Notices to End Tenancy for Landlord's use dated May 31, 2023 (the May Notice) and June 26, 2023 (the June Notice), issued pursuant to section 49; and
  - an authorization to recover the filing fee for this application, under section 72.
3. The Landlords' application pursuant to the Act is for:
  - an order of possession under the June Notice, pursuant to section 55; and
  - an authorization to recover the filing fee for this application, under section 72.
4. Section 55(1) 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.
5. Tenant TS (the Tenant) and the Landlords CB, RL and CV attended the hearing on November 3, 2023. The Tenant's witness CS and the Landlords' counsel KK also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.
6. This decision should be read in conjunction with the interim decision dated October 11, 2023.

**Service of the Notice of Dispute Resolution Proceeding, Amendment and Evidence (the Proceeding Package)**

7. The parties each confirmed receipt of the Proceeding Package and that they had enough time to review it.
8. Based on the testimonies I find that each party was served with the Proceeding Package in accordance with section 89 of the Act.

#### Preliminary Issue – Named Landlords

9. The Tenant's application lists applicant TS and respondents landlord CB and RL.
10. The Landlords' applications lists applicants RL and CV and respondent the Tenant.
11. The Tenant, RL and CV agreed that since June 26, 2023 the only landlords are CV and RL, as the rental unit's sale from CB, the previous owner, was completed on that date.
12. Pursuant to section 64(3)(a) of the Act, I have amended the Tenant's application to exclude CB, as he is not a landlord.

#### Issue to be Decided

13. Is the Tenant entitled to:
  - a. Cancellation of the Notices?
  - b. An authorization to recover the filing fee?
14. Are the Landlords entitled to:
  - a. An order of possession under the Notices?
  - b. An authorization to recover the filing fee?

#### Background and Evidence

15. While I have turned my mind to the testimony and evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the Landlords' obligation to present the evidence to substantiate the Notices.

16. Both parties agreed the tenancy started in May 2020. Monthly rent today is \$800.00, due on the first day of the month.
17. The parties also agreed that landlord RL served, and the Tenant received the May Notice on May 31, 2023 and the June Notice on June 26, 2023.
18. The Tenant submitted the application on June 6, 2023 and the amendment to dispute the June Notice on June 28, 2023. The Tenant continues to occupy the rental unit.
19. The parties submitted both Notices into evidence and confirmed they understand the Tenant is disputing both Notices.
20. The May Notice states the Landlord is CB and his father or mother will occupy the rental unit. The effective date is July 31, 2023. It also states the purchaser is RL. CB affirmed he mistakenly indicated that his mother would live in the rental unit, as he served the May Notice because he sold the rental unit to RL and CV and CV intend to live in the rental unit.
21. The parties submitted a letter dated May 31, 2023 attached to the May Notice: "I, RL, request that 2 month notice to end tenancy is given to the tenant of [rental unit]. Upon completion of purchase of unit which commences on July 1, 2023, I plan to have my mother reside there."
22. The June Notice, including the schedule of parties (form RTB26) states the Landlords are RL and CV and the landlord will occupy the rental unit. The effective date is August 31, 2023.
23. RL testified that she asked CB to serve the May Notice and RL served the June Notice because her mother and co-owner CV intends to live in the rental unit.
24. CV stated that she rented an apartment at the DO address, and her property manager informed her in the spring 2023 that she would receive a notice to end tenancy. CV submitted the notice to end tenancy dated June 30, 2023 into evidence (the CV's notice). It states the owner of the DO rental unit will move to that unit and the effective date is August 31, 2023.
25. CV said that she was not feeling safe at the DO address, as there were drug users in her neighbourhood, and she moved from the DO address to a short-term

rental located at the FO address on August 30, 2023. CV affirmed the FO address is located 10 kilometres from downtown CR. CV stated the FO address is a summer seasonal property, and it is very cold during winter.

26. CV testified the rental unit is in downtown CR and close to the medical facilities where she has medical appointments and is only 2 blocks from RL's working address.

27. CV said that she has kidney problems and had two cancers and a stroke.

28. CV affirmed that she lives independently, but RL eventually assists her, as she is 81 years old and sometimes needs help.

29. CV stated that she uses a walker and sometimes she needs a wheelchair. The rental unit has a wheelchair ramp and has an open-concept layout. CV and RL testified that they considered these aspects to purchase the rental unit. Furthermore, if CV can not drive again, it is easy to reach public transit from the rental unit.

30. RL said that she owns the FO address property, but CV can not live there because she needs to be close to the medical facilities located close to the rental unit and to RL's workplace, as she eventually assists CV.

31. The Tenant affirmed CV can not live independently due to her health concerns.

32. CV stated that she tried to transfer the rental unit's electricity bill to her name effective on September 1, 2023, because she imagined that she would be living in the rental unit at the time.

33. RL texted the Tenant in April 2022: "I bought the trailer so you could stay [redacted for privacy]. But [redacted] screwed up in her paperwork and it was not a legal condition of the sale like she thought it was. I was the one that orchestrated that so you could stay living there."

34. Counsel KK testified the April 2022 text message is not relevant, as the May and June Notices were served more than one year after the April 2022 messages.

35. RL said that she is a property manager and considered purchasing the rental unit in 2022 when she texted the Tenant, but she did not do so until June 2023.

36. The Tenant affirmed RL served 3 notices to end tenancy to other tenants indicating that her mother would move to the rental units referenced in these notices to end tenancy.
37. RL stated that she never served a notice to end tenancy for her mother. RL testified that she served notices to end tenancy on behalf of other landlords because she is a property manager. CV said that she never asked RL to serve a notice to end tenancy on her behalf prior to the May and June Notices.
38. The Tenant affirmed that she does not believe the testimony provided by RL and CV regarding serving prior notices to end tenancy, as RL owns several rental units at the FO address.
39. Witness CS stated that she does not know if CV intends to move to the rental unit, and she is also not aware of CV's health concerns.
40. CS testified that she received a 10 day notice to end tenancy from RL the day before the adjourned hearing. RL said she served a 10 day notice to end tenancy to CS because she was late with rent and RL manages CS's rental unit. RL cancelled the 10 day notice to end tenancy one hour after serving it because CS paid the rent owed.
41. Witness CS affirmed she observed RL serving a notice to end tenancy in November 2022 on behalf of landlord RT.
42. RL stated that she served a notice to end tenancy in November 2022 on behalf of landlord RT for his family to occupy that rental unit as an agent for RT.
43. The Tenant testified that she invited BR, SA and two other witnesses to attend the adjourned hearing and provide testimony about RL serving prior notices to end tenancy to benefit her mother, but RL intimidated these witnesses, and they decided not to attend the adjourned hearing.
44. RL said that she talked with BR and SA, as they live in a property that she manages. RL affirmed that BR asked her about the May and June Notices and she explained to him that she served the May and June Notices because her mother intends to live in the rental unit. RL stated that she did not intimidate BR and SA, or nobody else.

### Analysis

45. Section 49(8)(a) allows the tenant to dispute a 2 month Notice within 15 days after the date the tenant received it. As the Tenant confirmed receipt of the May Notice on May 31, 2023 and submitted this application on June 6 (paragraphs 17 and 18), I find the Tenant disputed the May Notice within the timeframe of section 49(8)(a) of the Act.
46. Pursuant to Rule of Procedure 6.6, the landlords have the onus of proof to establish, on the balance of probabilities, that the Notices are valid.
47. RTB Policy Guideline 2A states that when issuing a notice under section 49 of the Act the landlord must demonstrate there is not an ulterior motive for ending the tenancy: “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.”
48. In *Gallupe v. Birch*, 1998 CanLII 1339, the British Columbia Supreme Court states: “[35]...When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.”

### May Notice

49. I accept the convincing and uncontested testimony that RL asked CB to serve the May Notice because CV intends to move to the rental unit and that the rental unit's sale from CB to RL and CV was completed on June 26, 2023 (paragraphs 11 and 23).
50. Section 49(3) of the Act allows the landlord to serve a notice to end tenancy if the landlord intends to move to the rental unit and section 49(5) of the Act allows the

seller to serve a notice to end tenancy if the purchaser asks the landlord in writing to serve a notice to end tenancy if the purchaser intends to move to the unit.

51. I find the May Notice indicates the wrong reason to end the tenancy, as the parties agreed that CB served the May Notice because purchaser CV intends to live in the rental unit.

52. Section 68(1) of the Act allows a notice to end tenancy to be amended to correct a mistake if the person receiving the notice was aware of the correct information and it is reasonable to amend the notice to end tenancy.

53. Based on the parties' undisputed testimony and the May 31, 2023 letter (paragraphs 11, 21 and 23), I find it reasonable to amend the May Notice, as the parties agreed they understand the May Notice was served because purchaser CV intends to live in the rental unit. Thus, I amend the May Notice to indicate that it was served because purchaser CV intends to occupy the rental unit, per section 68(1) of the Act.

54. I find CV's testimony about the reasons why she intends to live in the rental unit convincing and detailed, as CV explained that she learned in the spring of 2023 that she would receive a notice to end tenancy at the DO address, and submitted the CV's notice into evidence, corroborating her testimony (paragraph 24). CV also explained why she was not feeling safe at the DO address (paragraph 25).

55. Furthermore, CV explained why she needs to live in the rental unit (paragraph 26) and both CV and RL provided convincing details about CV's health situation (paragraphs 27 to 30).

56. I find the Tenant's testimony about CV's health situation is vague, as the Tenant did not provide details (paragraph 31). The Tenant's witness CS is not aware of CV's health concerns (paragraph 39).

57. I find that the April 2022 text messages are not relevant, as CB served the May Notice on May 31, 2023, more than one year after the April 2022 messages. Furthermore, RL explained why she sent the April 2022 message (paragraphs 33 and 35).

58. I accept the uncontested testimony that RL is a property manager (paragraph 35).
59. I find RL did not harass witness CS, as RL explained that she served CS a notice to end tenancy for unpaid rent because she works as a property manager (paragraph 40).
60. Eventual notices to end tenancy served by RL as an agent for other landlords are not relevant to the May Notice, as RL works as a property manager (paragraph 42).
61. I find the Tenant failed to prove that RL harassed possible witnesses, as the Tenant did not provide details about the alleged harassment and RL sufficiently explained why she had a conversation with BR (paragraphs 43 and 44).
62. Even if RL owns several units at the FO address, CV still has the right to move to the rental unit (paragraph 38).
63. Considering the above findings (paragraphs 54 to 62), I find RL and CV proved, on a balance of probabilities, that CV intends to occupy the rental unit in good faith. I dismiss the Tenant's application to cancel the May Notice.
64. I find the form and correct content of the May Notice complies with section 52 of the Act, as the May Notice is signed and dated by seller CB, gives the address of the rental unit, states the effective date and it is in the approved form.
65. Pursuant to section 55(1) of the Act, I find RL and CV are entitled to an order of possession based on the May Notice.
66. I am not making findings about the June Notice, as I am issuing an order of possession based on the May Notice and the June Notice has an effective date after the May Notice (paragraphs 20 and 22).
67. RTB Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession.
68. Considering the Tenant has been occupying the rental unit since May 2020 (paragraph 16) and CV is living in a temporary short-term seasonal rental not



properly heated (paragraph 25), I find it reasonable to extend the effective date of the order of possession to 20 calendar days after service.

69. As I awarded RL and CV an order of possession based on the May Notice, I dismiss the application for an order of possession based on the June Notice.

70. Both parties must bear the cost of their filing fees, as they were not successful in their applications.

71. The Tenant may be liable for any costs that RL and CV incur to enforce the order of possession.

72. The Tenant is entitled to one free month of rent, per section 51(1) of the Act.

### Conclusion

73. Pursuant to section 55(1) of the Act, I grant an order of possession to RL and CV, effective **20 calendar days after service**. Should the Tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

74. RL and CV must serve the Tenant the order of possession as soon as possible, in accordance with section 88 of the Act.

75. 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: November 08, 2023

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Residential Tenancy Branch