



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing was convened as the result of the cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for the following:

- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) issued by the landlord
- an order cancelling a One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord
- to dispute a rent increase that is above the amount allowed by law
- a reduction in monthly rent
- an order requiring the landlord to make repairs to the rental unit
- an order suspending or setting conditions on the landlord's right to enter the rental unit
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement
- recovery of the filing fee

The landlord applied for the following:

- an order of possession of the rental unit pursuant to the 2 Month Notice issued to the tenants
- recovery of the filing fee

The tenants, the tenant's witness, the landlord, and the landlord's assistant attended, the hearing process was explained, and they were given an opportunity to ask

questions about the hearing process. All parties were affirmed. The witness was excused until their testimony was taken.

Although the parties claimed certain issues with their ability to serve evidence and/or receipt of the other's evidence, I was satisfied that all parties were served with each other's evidence and applications.

The parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Preliminary and Procedural Matters-

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the application, the most urgent of which are the application to cancel the 2 Month Notice and 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will only consider the tenants' request to cancel the 2 Month Notice and the 1 Month Notice. I will also consider the landlord's application for an order of possession of the rental unit. The balance of the tenants' application is dismissed, with leave to reapply.

Additionally, the landlord alleged that they did not have a tenancy agreement with tenant, KR, rather their original tenancy agreement was with KR's mother, JR, who is deceased.

The issue will be addressed within this Decision.

Issue(s) to be Decided

Are the tenants entitled to cancellation of either or both of the landlord's Notices to end the tenancy and recovery of the cost of the filing fee?

Is the landlord entitled an order of possession of the rental unit per the 2 Month Notice and recovery of the cost of the filing fee?

Has a tenancy formed between the tenants and the landlord?

Background and Evidence

The residential property is a home with 4 separate rental units. The tenants occupy the "main" suite, which is located upstairs, the landlord's daughter occupies another unit on the upper level, and two sets of tenants occupy the lower 2 levels. The two upper level units each have 2 bedrooms.

The undisputed evidence is that the tenant pays rent in the amount of \$1395 per month.

As to the matter of the landlord's allegation that they do not have a tenancy agreement with the tenants, the landlord testified as follows, in relevant part:

- The tenancy began with KR's mother, JR, on or about May 15, 1995, and due to the death of JR in 2022, there is no tenancy with KR or NT.
- At one time, KR rented the lower suite and paid rent separately.
- KR moved to Alberta, and then moved back.
- They were told that NT, KR's son, was only visiting and KR denied that NT was living in the rental unit and they only found out about NT living there a year and a half ago.
- They agreed that since JR's death, KR has been paying the monthly rent.

There was no written tenancy agreement for the tenancy, either with JR or KR.

2 Month Notice

In support of the 2 Month Notice, the landlord testified as follows, in relevant part:

That on September 19, 2023, they served the tenant the 2 Month Notice by registered mail and personal service. The Notice was dated September 19, 2023, for an effective move-out date of November 30, 2023. As reason for ending the tenancy, the landlord stated that **the child** of the landlord or landlord's spouse will occupy the rental unit. Filed in evidence was a copy of the Notice. The landlord listed both KR and NT as tenants.

The landlord first stated that their daughter and the landlord's wife will live in the rental unit, and although their daughter already lives in one of the upper floor levels, the landlord intends to convert the entire main level floor into one larger unit. The landlord submitted that their daughter wants the whole upstairs and needs 4 bedrooms in order for their children to come visit. The landlord submitted that their wife intends on staying in the rental unit some to visit with their grandchildren and sometimes stay the night or up to a week. The landlord submitted the residential property is their home and they have the right to take it over, and want to do so.

The landlord submitted that JR was like a grandmother to their family and that they treated JR as a member of the family.

In response, KR submitted that they have lived in the property for 30 years, at first downstairs, with the exception of 8-9 months while away assisting a son. In 2012 the residential property was divided into a 4-plex. During this time, NT moved back to help with JR due to declining health and that currently NT and KR each have a bedroom in their rental unit.

The tenant submitted that the landlord's wife lives next door and they share a driveway, so it is a false claim that the landlord's wife will stay a week in the rental unit. The landlord's daughter has only 2 children staying with her, but has always commented on how nice their rental unit is compared to the daughter's rental unit.

At various times, the landlord has told the tenants they need to be paid fair market rent and they can no longer afford the tenants. The landlord has also said they intend to renovate the property and has already had contractors in assessing the rental unit. At one point, the landlord told the tenant, "I want you out".

The tenant filed audio evidence.

The tenant's witness/sister, CB testified to the following, in relevant part:

CB submitted that the landlord asked the tenant to move out after JR died, but then changed their mind, instead wanting fair market value for the rental unit. The landlord declined to provide a tenancy agreement and they could no longer afford it.

In response, the landlord said they never had a problem with JR, but that is not the case now.

### 1 Month Notice

That on August 31, 2023, they served the tenant the 1 Month Notice by registered mail and personal service. The Notice was dated August 31, 2023, for an effective move-out date of October 31, 2023. As reason for ending the tenancy, the landlord stated that the tenant has assigned or sublet the rental unit without the landlord's written consent.

During the hearing, I determined that testimony was not necessary due to other findings referred to below and the parties were informed of this decision.

### Analysis

#### Tenancy between the parties

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities, I find pursuant to section 62(2) of the *Act* as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the *Act* stipulates that except as modified or varied under this *Act*, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Tenancy Policy Guideline 9 states the following:

## B. TENANCY AGREEMENTS

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

In the matters before me, I accept that the original tenancy agreement for the rental unit was between the landlord and JR, KR's mother, although the landlord never provided a written tenancy agreement with JR. I further find that tenancy was established in May 1995.

I also find the undisputed evidence is that the tenants, KR and NT, have lived in the rental unit for many years, and after JR died on September 1, 2022, the tenants remained living in the rental unit, paying the landlord monthly rent. Further, the landlord listed KR and NT both as tenants on the 2 Month Notice.

I find that after JR's death, the landlord allowed KR and NT to stay in the rental unit and that the established monthly rent of \$1395 was paid to the landlord. Apart from that, I find that KR and NT have had exclusive possession of the rental unit since JR's death.

For these reasons, I find that the landlord and KR and NT have established a tenancy, that KR and NT are co-tenants, that the monthly rent is \$1395, and that the monthly rent is due on the first day of the month, which was established by the receipt evidence filed by the landlord.

### 2 Month Notice

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith, which means there is a 2-part test the landlord must meet in order to be successful with their 2 Month Notice.

Tenancy Policy Guideline 2A (PG 2A) states that a landlord may end the tenancy if they or their close family member, *"intend in good faith to use the rental unit as a living accommodation or as part of their living space"*.

PG 2A further provides that 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 their obligations under the Act.

The landlord has the burden to prove that there was an honest intention and an absence of bad faith.

Upon review of the Two Month Notice to End Tenancy, I find that Notice to be completed in accordance with the requirements of section 52 of the Act.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In these matters, I find the landlord provided contradictory testimony about the true reason for ending the tenancy. The landlord at first said their wife and daughter would occupy the expanded rental unit, but when pressed then said the rental unit was for their daughter and children. Then the landlord went back to testimony that their wife would live or stay in the rental unit for multiple days, which I find makes no sense in light of the fact the landlord's wife lives next door. I find contradictory evidence is insufficient to support the party's claim.

Apart from that, the landlord's child was not present at the hearing to provide direct testimony as to why they required extra space, nor were there supporting documents, such as an affidavit or statutory declaration from their daughter about the true intentions of occupying the rental unit.

For these reasons, I find the landlord submitted insufficient evidence that they truly intended to use the rental unit for the stated purpose.

As to the issue regarding whether the 2 Month Notice was issued in good faith, I find the tenant's corroborated testimony that the landlord wants fair market value for the rental unit and they just want the tenants gone is sufficient evidence to show that the landlord lacked good faith and had an ulterior motive in issuing the 2 Month Notice. The landlord never specifically denied making these statements and I find the tenant's audio recordings support the tenant's version of events.

For the above reasons, I find the landlord submitted insufficient evidence to prove that the landlord's daughter truly intended on living in the rental unit for residential purposes for 6 months following the effective date of the Notice or that the 2 Month Notice was issued in good faith.

I grant the tenants' application and I **ORDER** the 2 Month Notice of September 19, 2023, for an effective move-out date of November 30, 2023 is **cancelled** and is of no force or effect.

### 1 Month Notice

As I have ordered that there is a tenancy agreement between the parties and as an assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord, I find the landlord submitted insufficient evidence that the tenant has assigned the tenancy agreement, as the tenant, KR, remains living in the rental unit.

I grant the tenants' application and I **ORDER** the 1 Month Notice of August 31, 2023, for an effective move-out date of October 1, 2023 is **cancelled** and is of no force or effect.

I **ORDER** the tenancy to continue until it may legally end under the Act.

As the tenants' application was successful, I grant the tenants recovery of the \$100 filing fee. I **authorize** the tenants a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenants should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

As I have granted the tenants' application and cancelled the 2 Month Notice, I dismiss without leave to reapply the landlord's application seeking enforcement of the 2 Month Notice.

### Conclusion

The tenants' application has been partially granted as I have ordered the 1 Month Notice and the 2 Month Notice cancelled and are of no force or effect.

The tenancy will continue until ended in accordance with the Act.



The tenants are granted a 1-time rent reduction of \$100 to recover the cost of the filing fee.

The balance of the tenants' application dealing with matters not related to the Notices to the end the tenancy is dismissed, with leave to reapply.

The landlord's application is dismissed, without leave to reapply.

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: December 06, 2023

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Residential Tenancy Branch