



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing dealt with two separate Tenant Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notices) under section 49 of the Act

Those listed on the cover page of this decision attended the hearing and were affirmed.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

I find that Advocate VB for the Tenants acknowledged service of the Proceeding Package and documentary evidence from the Landlord and that the Tenants are duly served in accordance with the Act.

Agent TL for the Landlord testified that the Landlord did not submit any evidence for consideration.

### **Issues to be Decided**

Should the Landlord's Two Month Notices be cancelled? If not, is the Landlord entitled to an Order of Possession?

### **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The rental units consist of upper and lower suites in a house (the House).

Both parties agreed to the following details of the tenancy for Tenant RL:

- The tenancy started on August 1, 2010
- The monthly rent is \$734.85

Both parties agreed to the following details of the tenancy for Tenant KD:

- The tenancy started on July 1, 2017
- The monthly rent is \$1,300.00
- The Tenant paid a security deposit of \$600.00, which the Landlord continues to hold in trust

On March 26, 2024, the Landlord served to the Tenants the Two Month Notices. The Tenants received the Two Month Notices on March 27, 2024. Copies of the Two Month Notices were submitted in evidence. The Two Month Notices are dated and signed, with the effective date of June 1, 2024. The Two Month Notices list the following reason to end the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's spouse.

Agent TL for the Landlord testified that the Landlord and their daughter live in the Philippines, and they plan to move to Canada. TL stated that the Landlord's daughter has turned 18, graduated from school and they have decided to move to Canada, and plan to occupy the rental unit. TL stated that the Landlord plans to occupy the entire House. TL stated that the Landlord has no plans to re-rent the rental units.

Advocate VB for the Tenants testified that the Tenants dispute the Two Month Notices were issued in good faith. VB stated that the Landlord has many other rental properties, and they have issued eviction notices to long term reliable tenants.

VB testified that in February 2024, the Landlord attempted a \$200.00 rent increase for the upper rental unit of the House. Tenant KD refused the rent increase.

Agent TL testified that the previous property manager issued the rent increase to several tenants, and they did not have knowledge of rules and laws.

## **Analysis**

**Should the Landlord's Two Month Notices be cancelled? If not, is the Landlord entitled to an Order of Possession?**

Section 49 of the Act states that a landlord may end a tenancy if the landlord or a close family member is going to occupy the rental unit. Upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

As Tenant KD disputed this notice on April 5, 2024 and Tenant RL disputed this notice on April 4, 2024 and as the Two Month Notices were served to the Tenants on March 27, 2024, I find that the Tenants have applied to dispute the Two Month Notices within the time frame allowed by section 49 of the Act. Therefore, per Rule of Procedure 6.6, the Landlord has the burden to prove that they have sufficient reasons to issue the Two Month Notices.

The Tenants dispute that the Notices are being issued in good faith. "Good faith" is a legal concept and means that a party is acting honestly when doing what they say they are going to do, or are required to do, under the Act. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v. Palmar Properties Ltd.* (2011 BCSC 827) the Supreme Court of British Columbia held that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. To reiterate, when the issue of an ulterior motive or purpose for ending a tenancy is raised, the onus is on the landlord to establish that they are acting in good faith (see *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636). In disputes where a tenant argues that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient grounds to issue the Two Month Notices to the Tenants and obtain an end to this tenancy for the reasons stated below:

The parties testified that in February 2024, the Landlord attempted a rent increase for Tenant KD's rental unit. Thereafter, by the following month the Landlord issued the Two Month Notices to the Tenants. I find it unlikely that the Landlord's plans for the rental unit changed after they attempted a rent increase weeks prior to issuing the Two Month Notices. I find the Landlord's actions raise the issue of an ulterior motive or purpose for ending the tenancy.

Further, I find the Landlord did not provide sufficient evidence to support their plan to occupy the rental unit. With the absence of details and documentary evidence, it is difficult to determine that the rental unit will be occupied by the Landlord. I find the Landlord did not prove that they have sufficient grounds to issue the Two Month Notices.

Therefore, the Tenants' applications are granted for cancellation of the Landlord's Two Month Notices under section 49 of the Act.

The Two Month Notices of March 26, 2024, are cancelled and are of no force or effect. Both tenancies continue until they are ended in accordance with the Act.

## **Conclusion**

The Tenants' applications are granted for cancellation of the Landlord's Two Month Notices under section 49 of the Act.

The Two Month Notices of March 26, 2024 are cancelled and are of no force or effect.

Both tenancies continue until they are ended in accordance with the Act.

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: May 31, 2024

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Residential Tenancy Branch