

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's Three Month Notice to End Tenancy for Purchaser's Use of Property (Three Month Notice) under section 49 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Tenant K.M. attended the hearing for the Tenant.

Landlord G.H., Landlord S.H., Landlord R.I., Landlord C.I., Landlord Oth. J.I., and Landlord Oth. C.I.2. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

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Service of Evidence

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

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Issues to be Decided

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

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Facts and Analysis

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

The Landlord provided a copy of the Contract of Purchase and Sale. It states R.I. and C.I. will take vacant possession of the property from G.H. and S.H. on October 1, 2025, at 1:00 pm. Among the outlined terms and conditions is the requirement for the Purchasers to give the Sellers a Buyer's Notice to Seller for Vacant Possession, and for the Sellers to serve upon the Tenant a notice to end tenancy. The Landlord provided a copy of the Buyer's Notice to Seller for Vacant Possession

Both parties provided copies of the Three Month Notice. It is signed July 18, 2025, with a move out date of October 31, 2025. The reason given is that the daughter of the Purchaser will occupy the rental unit. The Tenant affirms receiving the Three Month Notice on July 18, 2025. I find said Notice to be a valid Three Month Notice per section 52 of the Act.

Both parties agree that the residential property is a detached house with three floors plus a basement, and that it has been divided into four rental units, one on each floor, including a basement suite. Both parties agree that the Tenant lives in the third floor rental unit and that the second floor unit is currently unoccupied.

Should the Landlord's Three Month Notice be cancelled?

R.I, and C.I. both affirm that their daughter, J.I. and their son, C.I.2. will occupy the third floor rental unit, while they occupy the main floor unit. Both J.I. and C.I.2 affirm they will occupy the third floor unit.

The Tenant disputes that the Three Month Notice is 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

The Tenant argues that the three-month notice to end tenancy should be cancelled because the rental unit is in a state of disrepair and not suitable for occupancy without

major renovations. She affirms that the proper notice to end tenancy would be one for renovations, not for landlord use. Despite living in the unit for many years, the Tenant affirms that no one should be living in it in its current condition. They describe numerous safety and habitability issues, including electrical hazards, lack of smoke detectors, deteriorated flooring, mold, rodent droppings, and a fire escape that poses a serious risk. They submitted photographic evidence to support their claim.

However, upon review, I find that much of the evidence presented pertains to issues located outside the rental unit itself, such as, the fire escape requiring repairs, inadequate attic insulation, and the presence of rodents in the attic. As these concerns are external to the unit in question and therefore can be addressed while the rental unit is occupied, I find they do not prevent the occupancy of the rental unit, nor are they directly relevant to determining whether the unit is suitable for occupancy.

The Tenant further provided photographs of the interior of the rental unit.

The Landlord additionally provided a copy of an August 26, 2025, email from a home inspection company stating the following:

Following a thorough review, no visible significant issues were identified during the inspection that would prevent safe and reasonable occupancy of the premises. Items that were considered safety issues were discussed during and after inspection with the buyers and necessary recommended repair/ replacements can be completed promptly and with minimal inconvenience to the occupants at the time of possession. The unit is suitable for immediate occupancy.

Upon review of both parties' evidence regarding the rental unit's interior, I find it does not indicate a need for major repairs or renovations that would require a notice to end tenancy for renovations rather than landlord use. I find the repairs or renovations that might be desired could, on a balance of probabilities, be done while the rental unit was occupied.

Section F of Policy Guideline 2A states that if a comparable vacant rental unit exists and is not selected for occupancy, this may suggest the Landlord is not acting in good faith. The Tenant affirms that the Landlord's daughter should occupy the vacant second floor rental unit instead of issuing a notice to end the tenancy for the third-floor unit. The Tenant affirms the second floor unit is more modern, safer, and better suited for the purchaser's adult children.

The Landlord affirms that the two units are not comparable. They affirm that the second floor unit has a different configuration having full height ceilings, better natural light, and a more functional kitchen. In contrast, the third-floor unit has sloped ceilings, a cramped kitchen, and a converted balcony used as a second bedroom, making it a less desirable two bedroom unit.

The Tenant provided photographs of the interior of the second floor unit which shows the unit is much nicer than the third floor unit, being better decorated, with better lighting, and in a condition that suggests it was more recently redone than the third floor rental unit.

The Policy Guideline relied on by the Tenant only references comparable units, not units which are not comparable. Upon review of the provided evidence, I find the two units are, in fact, not comparable, and the second floor rental unit is generally much more desirable than the third floor rental unit.

However, even if the second-floor unit is objectively better than the third-floor unit, the Landlord is not obligated to occupy the vacant unit instead. In this case, the Landlord and purchaser have stated that the third-floor unit is the one they intend for their children to occupy, and that this decision is based on their personal needs and plans for the property. While the second-floor unit is more modern or valuable, the Landlord has the right to retain it for rental income, especially if doing so supports their financial obligations, such as mortgage payments. I find that the Landlord is not compelled to occupy a different unit, even if it appears more suitable from the Tenant's perspective.

For the above reasons, the Tenant's application for cancellation of the Landlord's Three Month Notice to End Tenancy for Landlord's Use of Property (Three Month Notice) under section 49 of the Act is dismissed, without leave to reapply

Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application for cancellation of the Landlord's Three Month Notice to End Tenancy for Landlord's Use of Property (Three Month Notice) under section 49 of the Act is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective by 1:00 PM on October 31, 2025, after service of this Order on the Tenant(s). Should the Tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed 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 8, 2025

Residential Tenancy Branch