



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on August 28, 2020, wherein the Tenants sought to cancel a 2 Month Notice to End Tenancy for Landlords' Use, issued on August 27, 2020 (the "Notice").

The hearing of the Tenants' Application was scheduled for 11:00 a.m. on October 9, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was also assisted by an advocate K.Y.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the Notice be cancelled?

### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the

reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

A copy of the tenancy agreement was provided in evidence and which indicated that this tenancy began March 1, 2019. Monthly rent is \$5,200.00 and the Tenants paid a \$2,600.00 security deposit.

The Landlord issued the Notice on August 27, 2020. While the Notice was not provided in evidence before me, the Tenant confirmed that it was her understanding the Landlord issued it claiming her parents were moving in.

Through her translator, the Landlord confirmed that the first reason why she wants to end this tenancy because she was very upset that the Tenants were growing cannabis in the house. She also stated that her second reason was that she was trying to have her parents move to Canada. She further claimed that because of the cannabis usage her parents do not want to come anymore.

The Tenant testified as follows. She stated that the real reason the Landlord wants to end the tenancy is because they are growing medical cannabis. She stated that she has legal authority to do so. She also disputed the Landlord's evidence that she ever intended to have her parents reside in the rental unit.

### Analysis

The Landlord issued the Notice pursuant to section 49(3) which reads as follows:

**49(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.

As noted, the Landlord bears the burden of proving the reasons for ending the tenancy on a balance of probabilities.

The Tenants alleges the Notice was not given in good faith. They allege that the real reason the Landlord seeks to end the tenancy is because she was upset that they were growing medical cannabis on the rental property. This was not disputed by the Landlord who confirmed in her testimony that her first reason for ending the tenancy was because the Tenants' were growing cannabis. She also stated that while she wanted her parents to move to Canada, they no longer wanted to come.

*Residential Tenancy Branch Policy Guideline 2--Ending a Tenancy: Landlord's Use of Property* provides in part as follows:

### **C. 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 legislation or a tenancy agreement. 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 BC Supreme Court found 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. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

...

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I find the Landlord's ulterior motive is to end this tenancy because she was upset the Tenants were growing medical cannabis. While the Landlord may have been hopeful that her parents would move to Canada, I am not satisfied that her reason to end this tenancy is because her parents have a good faith intention to reside in the rental unit.

**I therefore find that the Tenants' Application should be granted, and the Notice should be cancelled. The tenancy shall continue until ended in accordance with the Act.**

### Conclusion

The Tenants' request to cancel the Notice is granted. The tenancy shall continue until 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: October 09, 2020

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Residential Tenancy Branch