



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RIVERPORT WAY HOLDINGS  
LTD. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes: CNL FFT

### Introduction

The tenant disputes a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 59(8) of the *Residential Tenancy Act* ("Act") and seeks an order cancelling the Notice. In addition, the tenant seeks recovery of the application filing fee pursuant to section 72 of the Act.

Attending the dispute resolution hearing were the tenant and four persons for the landlord. The parties were affirmed, no significant service issues were raised, and Rule 6.11 of the h's *Rules of Procedure* was explained to the parties.

### Preliminary Issue: Service of Landlord's Evidence

It is noted that the landlord served its documentary evidence on the tenant by way of Canada Post registered mail. Proof of service of the mail was submitted by the landlord's agent, including photographs of the mail and the registered mail tracking numbers. The tenant did not accept the registered mail and testified that he doesn't know anything about it.

Based on the evidence of the parties, including the persuasive evidence of the registered mail tracking information, it is my finding that the landlord served their evidence in compliance with section 88 of the Act. The landlord's evidence is therefore accepted and shall be considered, notwithstanding the tenant's non-acceptance of the mail that was sent to him.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the application filing fee?

## Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began in 2019 and the current monthly rent is \$1,421.00. The tenant paid a \$700.00 security deposit. Neither party provided a copy of the written tenancy agreement. The tenant referred to an earlier tenancy agreement where rent was \$1,200.00, but he did not provide a copy of this earlier agreement.

On April 26, 2022 the landlord gave the tenant the Notice by posting it on the door of the rental unit. All four pages of the Notice were given to the tenant and a copy of the Notice was submitted into evidence. Page two of the Notice indicate that the landlord or their spouse would be occupying the rental unit. The tenant filed his application to dispute the Notice on May 11, 2022.

On June 20, 2022, the landlord “withdrew” the earlier Notice and issued a subsequent, corrected,” Notice. The corrected Notice—which was identical to the first Notice in all but the information on page 2—indicated that the father or the mother of the landlord would be occupying the rental unit. This corrected Notice was served on the tenant by being posted on the door. One of the landlord’s witnesses testified under oath that service was executed on this date and in this manner.

While the tenant does not recall the corrected, second Notice being served on him, I am satisfied based on the landlord’s evidence that it was. Nevertheless, the second Notice will be treated as being properly disputed, and no conclusive presumption under section 49(a) of the Act will be considered.

The landlord gave evidence that the landlord’s mother is handicapped and that she needs a handicapped accessible accommodation. The rental unit in question is a ground-floor unit and is handicapped accessible. The shower in the rental unit, for example, has grab bars, of the kind used by folks with mobility issues.

Submitted into evidence is medical documentation supporting the landlord’s submission that the mother is handicapped. Last, the landlord testified that this rental unit is the only one in the building that is handicapped accessible.

In response, the tenant argued, more indirectly than explicitly, that the landlord previously wanted the tenant to vacate the rental unit if the tenant wasn't willing to pay higher rent. He argued that the landlord wants him out so that the landlord can rent it for more. Further, he suggested that there are other rental units they could be giving to the mother. Nevertheless, the tenant stated that he understands that the rental unit is handicapped accessible.

In final submissions the landlord testified that the tenant has always paid \$1,400.00 and that there have not been any previous disputes by the tenant about the amount being paid. The agent referred to a current tenancy agreement (a copy of which, as noted above, was not provided into evidence) which is signed by the tenant and for which rent is \$1,400.00.

### Analysis

Where an applicant tenant disputes a notice to end tenancy, the onus falls on the respondent landlord to prove the ground for ending the tenancy.

Section 49(3) of the Act states that “[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.”

“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. And, 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.

In this case, however, the tenant submitted no evidence to support his claim that the Notice was issued because the landlord somehow wants to rent out the rental unit for a higher rent. Moreover, the tenant himself accepted that the rental unit is to be used by the landlord's mother, who is handicapped and requires a handicapped accessible accommodation.

In short, I am not persuaded that the tenant has proven that the landlord has acted in bad faith in issuing the Notice. There is no evidentiary foundation on which a finding can be made that the Notice was issued due to the landlord's alleged intention to re-rent the rental unit for a higher rent. Indeed, the landlord's medical evidence regarding his mother's condition supports the ground on which the Notice was issued.

Taking into consideration the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has proven the ground on which the Notice was issued. Accordingly, the Notice is upheld, and the landlord is, pursuant to section 55(1) of the Act, granted an order of possession. It is noted that the Notice complies with section 52 of the Act in form and content.

The order of possession is issued to the landlord, in conjunction with this Decision. It is the landlord's responsibility to serve a copy of this order on the tenant no later than August 22, 2022. Given that the tenant has paid rent for August, however, the order of possession will not go into effect until August 31, 2022 at 1:00 PM.

The tenant's claim to recover the cost of the application filing fee is dismissed.

### Conclusion

**The tenant's application is hereby dismissed, without leave to reapply.**

**The landlord is hereby granted an order of possession which shall go into effect on August 31, 2022. A copy of the order of possession must be served by the landlord on the tenant no later than August 22, 2022.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 12, 2022

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Residential Tenancy Branch