



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, CNQ, MNDCT, DRI, RP, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants August 09, 2022 (the “Application”). The Tenants applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 29, 2022 (the “July Notice”)
- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 25, 2022 (the “September Notice”)
- For compensation for monetary loss or other money owed
- To dispute a rent increase that is above the amount allowed by law
- For a repair order
- To recover the filing fee

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the July Notice and September Notice (the “Notices”) and dismiss the remaining requests because they are not sufficiently related to the dispute of the Notices. I have considered the dispute of the Notices and request to recover the filing fee. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence, and no substantive issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the July Notice be cancelled?
2. Should the September Notice be cancelled?
3. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The parties agreed there was a written tenancy agreement in this matter which started in 2017.

The Landlords had issued the July Notice and then September Notice for two different reasons. The Landlord acknowledged the July Notice should be cancelled.

The parties agreed the September Notice was served, and received by the Tenant, September 26, 2022.

The July Notice was issued July 29, 2022, on the basis that “**All of the conditions for the sale of the rental unit have been satisfied** and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit (emphasis added).”

The September Notice was issued on the basis that “The rental unit will be occupied by the Landlord or the Landlord’s spouse”.

The Landlord testified as follows. Their son finished a university program and is looking for employment. There are very little employment opportunities in the city them and their son currently live in. Their son needs a place in the city of the rental unit. Their son is going to live in the rental unit and the Landlord is going to move into the rental

unit with their son to get their son acclimatized to the area. Their son does not currently have a job in the city of the rental unit. They currently live in another city with their spouse and son. They own their current home. Their spouse will stay in their current home because the two are having some issues. The rental unit is a three-bedroom townhouse. They work remotely.

I asked why the September Notice does not state that the Landlords' son intends to occupy the rental unit when this sounds like the main purpose of issuing the September Notice. The Landlord testified that, when the September Notice was issued, they intended to move into the rental unit due to the issues they are having with their spouse and their son suggested he come up with the Landlord. The Landlord testified that there is a bigger base of employers for their son in the city of the rental unit.

I asked the Landlord about the July Notice and what happened with it. The Landlord testified that the people purchasing the rental unit wanted vacant possession of the rental unit and were tired of waiting. The Landlord testified that the sales contract for the rental unit had a condition that they would give the purchasers vacant possession. The Landlord acknowledged that all of the conditions for the sale of the rental unit had not been satisfied when they issued the July Notice. The Landlord acknowledged they issued the July Notice knowing it was not correct and knowing it could lead to the eviction of the Tenants.

The only supporting evidence provided by the Landlords is a typed word document purportedly from their realtor; however, the document is not signed.

The Tenant testified as follows. On September 22, 2022, the Landlord sent an email referencing their effort to expediate a sale of the rental unit. On September 26, 2022, four days later, the Landlords issued the September Notice. They do not believe the Landlord and/or their son intends to move into the rental unit because this plan would had to have come about within the four days between the September 22<sup>nd</sup> email and September 26<sup>th</sup> issuance of the September Notice. The Landlord has been "sale focused" and therefore the Tenant does not believe the stated reasons for issuance of the September Notice. The Landlord works in the city they currently live in.

In reply, the Landlord agreed they sent the Tenants an email September 22<sup>nd</sup> about selling the rental unit. The Landlord denied that they came up with the stated plan for the rental unit within four days and said the plan had always been in the back of their mind.

## Analysis

The July Notice is cancelled by agreement of the Landlord.

The September Notice was issued pursuant to section 49(3) of the Act which states:

(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.

Policy Guideline 2A deals with ending a tenancy for occupancy and states in part:

### B. GOOD FAITH

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

Pursuant to section 49(8)(a) of the *Act*, the Tenants had 15 days to dispute the September Notice. I find the Tenants received the September Notice September 26, 2022, and filed the dispute October 06, 2022, within time.

The Landlords have the onus to prove the grounds for the September Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

When 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.

I do not accept that the Landlord and their son intend in good faith to occupy the rental unit for the following reasons.

I find the Landlord took part in issuing the July Notice knowing it was not accurate and knowing it could lead to eviction of the Tenants because the Landlord acknowledged this. It was dishonest of the Landlord to allow the July Notice to be issued when they knew the grounds for it were not accurate. I find the Landlord is not credible when it comes to the reasons for seeking to end this tenancy pursuant to section 49 of the *Act*.

I find the Landlord's testimony itself was contradictory, and not in accordance with the September Notice. At first, the Landlord made it sound as though their son intended to move into the rental unit and then they decided they would go with their son to help him acclimatize to the area. Yet, the September Notice does not state that the child of the Landlord or Landlord's spouse intends to occupy the rental unit. I find there is a discrepancy between the alleged plan and the September Notice. Further, the Landlord testified later in the hearing that they intended to move into the rental unit due to issues they are having with their spouse, and then their son suggested he come with the Landlord. I find the Landlord changed their testimony during the hearing in relation to why them and their son are allegedly intending to move into the rental unit. I again find the Landlord's testimony is not credible.

Further, I find it unlikely that the Landlord and their son in fact intend to move into the rental unit when the Landlords were still talking about selling the rental unit four days before the September Notice was issued. I agree with the Tenant that the Landlords seem to be “sale focused” in relation to the rental unit given they were attempting to sell it in July of 2022, when the July Notice was issued, and still talking about selling it four days before the September Notice was issued.

Given the above, I find I cannot rely on the Landlord’s testimony in the absence of evidence to support it. The only supporting evidence provided by the Landlords is a typed word document purportedly from their realtor. I place no weight on this word document or what is stated in it because it is not signed by the purported author and there is nothing before me to confirm it came from the purported author. I consider the Landlords to have submitted no evidence to support the Landlord’s testimony about the grounds for the September Notice. I find the lack of supporting evidence concerning because there are numerous different documents that could have been submitted to support the testimony of the Landlord.

Given the above, I find the following. The Tenant has disputed the good faith of the Landlord and provided a reasonable basis for this dispute. The Landlords have failed to provide sufficient compelling evidence to prove the grounds for the September Notice. The September Notice is therefore cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenants have been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from their next rent payment.

### **Conclusion**

The September Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenants can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

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: January 09, 2023

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Residential Tenancy Branch