



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

This hearing dealt with the tenant's application, filed on March 1, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated February 17, 2023, and effective May 1, 2023 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord and the tenant attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 47 minutes from 9:30 a.m. to 10:17 a.m.

The tenant stated that he did not require an English language translator at this hearing. He stated that English was not his first language, but he could understand me during this hearing. He asked me to speak slowly, which I did. I asked the tenant to let me know if he required me to repeat or rephrase any information during this hearing. The tenant agreed to same.

Both parties confirmed their names and spelling. Both parties provided their email addresses for me to send this decision to both parties after this hearing.

The landlord confirmed that he owns the rental unit. He provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, both parties separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they did not want to settle this application, they wanted to proceed with this hearing, and they wanted me to make a decision. Both parties were given multiple opportunities to settle this application and declined to do so.

I repeatedly cautioned the tenant that if I dismissed his application without leave to reapply, I would uphold the landlord’s 2 Month Notice, end the tenant’s tenancy, and issue an order of possession against the tenant, effective on May 1, 2023, which is the effective date on the 2 Month Notice. The tenant repeatedly affirmed that he was prepared for the above consequences if that was my decision.

I repeatedly cautioned the landlord that if I cancelled his 2 Month Notice, I would not issue an order of possession to him against the tenant, and this tenancy would continue. The landlord repeatedly affirmed that he was prepared for the above consequences if that was my decision.

The landlord confirmed receipt of the tenant’s application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant’s application.

The landlord stated that he did not submit any documentary evidence for this hearing.

Pursuant to rule 64(3)(c) of the *Act*, I amend the tenant’s application to include his full legal surname which is 2 separate words. The tenant consented to this amendment during this hearing. The landlord did not object to same during this hearing. I find no prejudice to either party in making this amendment.

The landlord testified that the tenant was personally served with a copy of the landlord’s 2 Month Notice on February 18, 2023, by a process server. The tenant confirmed

receipt of the landlord's 2 Month Notice on February 20, 2023, in person, by mail, and by email. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on February 20, 2023.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for landlord's use of property?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement?

Is the tenant entitled to recover the \$100.00 filing fee paid for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2011. Monthly rent in the current amount of \$2,894.60 is payable on the first day of each month. A security deposit of \$1,300.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant continues to occupy the rental unit.

The tenant provided a copy of the landlord's 2 Month Notice. Both parties agreed that notice states the following reason for seeking an end to this tenancy (which was read aloud by the landlord during this hearing):

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*
- *Please indicate which family member will occupy the unit.*
  - *The landlord or the landlord's spouse.*

The landlord testified regarding the following facts. He needs to live in the rental unit. This is his only property in the province, city, and area. He needs to care for his

grandmother-in-law ("GIL"). She is ill and had to go to the hospital twice this year. He wants to live close to her before she dies. He currently lives out of country in the United States of America (USA). He intends to drive back to the rental unit and bring his personal belongings and ship the rest of it later. He wants to be back at the rental unit for May 1, 2023, the effective date on the 2 Month Notice. The tenant has lived at the rental unit for more than a decade and the landlord has treated the tenant well, with respect and dignity. The landlord completed plumbing repairs, replaced the hot water tank, and kept the rent reasonable to the market value. The tenant said that the landlord did not act in good faith. The landlord's GIL is 97 years old, and she cooked for the landlord while he was in college. The landlord wants a chance to say goodbye to her before she dies.

The tenant testified regarding the following facts. He does not think the landlord is acting in good faith. He has lived at the rental unit for 13 years. The landlord could have called the tenant personally and told him about the eviction, not apply legally to the Court and give a 2 Month Notice. The tenant's two children are in the middle of school right now. The tenant has paid half a million in rent to the landlord, which is almost 2 times the price of the house. This is the third or fourth time that the landlord is trying to "evacuate" the house. The landlord tried before to "evacuate" because the tenant paid one day late. In the last two years, the news said that there was a 30% increase in "evacuation," all people have problems, and the mortgage and rent have gone up. The landlord wants to "evacuate" the rental unit so he can increase the rent. The landlord should have called the tenant directly, told the tenant there was a problem, and asked the tenant what he thought about it. The landlord is a realtor, invests in property, and is a mortgage broker. It is not on the landlord's work website that the landlord is moving anywhere. Three months ago the tenant agreed to provide the landlord with 12 postdated rent cheques, which the landlord asked for. The tenant wrote the cheques and sent them to the landlord in the USA. The next month, the landlord tried to "evacuate" the tenant. It is the "responsibility of the Court and the charter of the USA to protect citizens" for five things, including "food, health, education, clothing, and housing." The tenant has taken care of the landlord's house like it was his own. The tenant has spent the last 7 to 8 years completing repairs and painting the rental unit with his own money.

The landlord stated the following facts in response. This is the third time he applied for arbitration. The first and second times, the tenant did not pay rent on time. The second time was "terrible" because the tenant paid partial rent on the first of the month. The landlord called and emailed the tenant, so he made second and third partial rent payments. The landlord warned the tenant to pay full rent by the first day of each

month. The RTB arbitrator at the last hearing ordered the tenant to provide post-dated rent cheques, for the full amount of rent, by the first day of each month, to the landlord. The tenant has been there for 13 years. The landlord has no prior knowledge of any damages at the property. There was a leak in the faucet outside the house and the landlord fixed it in 1 day and the tenant did not even know. The landlord knows that he has to provide 1 month free rent to the tenant pursuant to the 2 Month Notice. The tenant has not paid half a million in rent to the landlord. The landlord likes the tenant and his family and appreciates them. The landlord owns 1 small mortgage company and he runs it on his own. His company has 3 locations in the USA and the landlord can remote can work remotely from anywhere. The landlord wants to spend the last couple of years or however long she has, with his GIL, as he does not know when she will die. She was in the hospital for 1 month this year because she passed out in the kitchen. The landlord is worried about her health and safety and wants her to live a happy life in the time that she has left before she dies.

### Analysis

### Application and Rules

The tenant, as the applicant, received an application package from the RTB, including instructions regarding the hearing process. The tenant received a document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing this application. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*

- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made and links to the RTB website and *Rules* are also provided in the NODRP. I informed both parties that I had 30 days to issue a written decision after this hearing. Both parties affirmed their understanding of same.

The tenant received a detailed application package from the RTB, including the NODRP document, with information about the hearing process, notice to provide evidence to support his application, and links to the RTB website. It is up to the tenant to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenant to provide sufficient evidence of his claims, since he chose to file this application on his own accord.

The following RTB *Rules* are applicable and state the following, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

*...*

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the tenant did not sufficiently explain or present his application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this lengthy 47-minute hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

The tenant did not submit any documentary evidence with his application, except for a proof of service of his application and a copy of the landlord's 2 Month Notice.

## Findings

### 2 Month Notice

The tenant stated the following, regarding his application to cancel the 2 Month Notice, on the RTB online dispute access site:

*"I have multiple reasons to believe that the owner does not intend to use the property for the reason indicated on the two month notice." [sic]*

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within 15 days after he received the notice. The tenant claimed that he received the notice on February 20, 2023. The tenant filed this application to dispute the notice on March 1, 2023.

Therefore, the tenant is within the 15-day time limit under the *Act*. Accordingly, where the tenant applies to dispute the 2 Month Notice by the deadline, the burden of proof is on the landlord to prove the reason on the notice. I informed both parties of the above information during this hearing and they affirmed their understanding of same.

Section 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, states the following, in part, in section "B. Good Faith:"

*In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*

*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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA 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 (s.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 suggest 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.*

I find that the landlord provided sufficient testimonial evidence that he intends, in good faith, to occupy the rental unit for at least 6 months, pursuant to the 2 Month Notice.

The landlord is the owner of the rental unit and qualifies as a landlord to move into the rental unit, pursuant to section 49 of the Act. I find that the landlord has no ulterior motives to end this tenancy. I find that the landlord does not intend to re-rent the rental unit to obtain a higher rent.

I accept the affirmed testimony of the landlord at this hearing. I accept that the landlord intends to occupy the rental unit, to be closer to his elderly 97-year-old GIL, who lives nearby, and who cared for him when he was younger. I accept that the landlord's GIL is ill, that she was in the hospital most recently for a month, and that she does not have long to live. While the landlord did not provide documentary evidence to confirm the above information, the tenant did not dispute same, during this hearing.

I accept that the landlord can work remotely, including at the rental unit, because he owns his own company, which has multiple locations in the USA. I accept that the landlord intends to drive to the rental unit from the USA, with his belongings, and to have other items shipped at a later date, if required. While the landlord did not provide documentary evidence to confirm the above information, the tenant did not dispute same, during this hearing. While the tenant stated that the landlord has not listed his



moving status on his company website, I do not find that this casts doubt on the landlord's personal intention to move into the rental unit, which does not have to be advertised online on a public company work website.

I find that the tenant was unable to provide sufficient evidence to dispute the landlord's 2 Month Notice and to support his assertion that the landlord does not intend, in good faith, to occupy the rental unit.

I find that the tenant failed to provide sufficient evidence of the following: that the landlord's intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, or evidence to show that the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, to suggest that the landlord is not acting in good faith. This is as per Residential Tenancy Policy Guideline 2A above.

Both parties agreed that there were 2 previous disputes at the RTB, regarding unpaid rent. Neither party provided copies of any previous RTB decisions or file numbers, nor did they indicate same during this hearing. Both parties agreed that the tenant paid rent late to the landlord. The landlord stated that an RTB Arbitrator ordered the tenant to provide post-dated cheques to the landlord at a previous hearing, which the tenant did not dispute. The tenant confirmed that he provided post-dated cheques to the landlord. The landlord agreed to return the tenant's cheques and agreed that he owed the tenant for 1 month free rent compensation, pursuant to the 2 Month Notice.

I find that the landlord is entitled to pursue his legal right to collect rent from the tenant every month for this tenancy, as per section 26 of the *Act*, while the tenant occupies the rental unit. I find that the tenant was not evicted in the previous 2 RTB hearings and the landlord continued this tenancy and continued to collect rent from the tenant. I find that the above events do not indicate a pattern of behaviour of eviction by the landlord, or any attempts by the landlord to increase the tenant's rent.

I find that the tenant's assertion that the landlord intends to re-rent the property to new tenants at a higher rent amount, is merely speculation and conjecture. The tenant failed to provide sufficient documentary and testimonial evidence of same. The tenant did not reference any letters, notices, text messages, emails, witnesses, or other such information, indicating that the landlord increased the tenant's rent, intended to increase the tenant's rent, or wanted to re-rent the rental unit to new tenants at a higher rent. I find that this demonstrates that the landlord is not seeking a financial profit, to increase the tenant's rent, or to re-rent the unit for a higher amount to new tenants.

I find that the tenant failed to provide sufficient evidence that the landlord owns other properties, where the landlord can reside. The landlord said that this was his only owned property in the area. I find that the tenant failed to provide sufficient evidence that the landlord can occupy comparable vacant rental units in the property.

The tenant's main submissions, throughout this hearing, were that the landlord should have called the tenant personally, asked the tenant's opinion, not issued a 2 Month Notice to the tenant, and not have gone through the legal RTB process. The tenant claimed that he should not be evicted because he has lived at the rental unit for 13 years, paid a lot of rent, and his two children are in the middle of school at this time. None of the above factors are relevant to this application or the 2 Month Notice.

I find that the landlord did not waive his right to enforce the 2 Month Notice, by accepting rent from the tenant after the effective date of the notice. The landlord did not withdraw or cancel the notice prior to or during this hearing, or tell the tenant that it was withdrawn or cancelled. The landlord attended this hearing and continued to pursue an order of possession against the tenant. The landlord is entitled, pursuant to section 26 of the *Act*, to receive rent from the tenant, while the tenant is still occupying the rental unit. I find that the landlord accepted rent from the tenant based on use and occupancy only, and it did not reinstate this tenancy.

The tenant did not indicate that he believed or was told by the landlord that his tenancy was reinstated or that the 2 Month Notice was cancelled. The tenant did not cancel this hearing or withdraw his application. The tenant appeared at this hearing to pursue a dispute of the landlord's 2 Month Notice.

On a balance of probabilities and for the above reasons, I find that the landlord intends to occupy the rental unit in good faith for at least 6 months. I find that the landlord qualifies as a landlord and owner under section 49 of the *Act*. I find that the landlord has met his onus of proof under section 49 of the *Act*.

I dismiss the tenant's application to cancel the landlord's 2 Month Notice, without leave to reapply. Pursuant to section 55 of the *Act*, I grant an order of possession to the landlord, effective at 1:00 p.m. on May 1, 2023, which is the effective date on the 2 Month Notice. I find that the landlord's 2 Month Notice, dated February 17, 2023, complies with section 52 of the *Act*.

Throughout this hearing, I repeatedly informed the tenant that I could issue an order of possession against him, if I upheld the landlord's 2 Month Notice and ended this tenancy. The tenant repeatedly affirmed his understanding of same.

### Other Claims

The tenant applied for an order requiring the landlord to comply with the *Act, Residential Tenancy Regulation* or tenancy agreement. The tenant did not provide any testimony at this hearing, regarding this claim. The tenant stated the following on the RTB online dispute access site, regarding this claim:

*"I want the landlord comply with good faith and honesty."* [sic]

The above statement appears to refer to the 2 Month Notice, but the tenant did not clarify same at this hearing. As this tenancy is ending, I am not required to make a decision regarding this claim, as it relates to an ongoing tenancy only. This claim is dismissed without leave to reapply.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an order of possession to the landlord, effective at 1:00 p.m. on May 1, 2023. The tenant must be served with this order. Should the tenant 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 *Residential Tenancy Act*.

Dated: April 06, 2023

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Residential Tenancy Branch