



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Advent Real Estate Services Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNL, OLC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on June 4, 2023 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 29, 2023.

### Preliminary Matter – Applicant/Respondent service of evidence to the other

#### *Tenant disclosure*

At the start of the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant as required. The Tenant confirmed they delivered this in person, and also by registered mail.

The registered mail tracking number recorded by the Tenant in the application process reveals that the Landlord received the registered mail on June 12, 2023.

The Tenant also stated they provided additional evidence “in response to the Landlord’s counterclaim”. Later in the hearing the Landlord confirmed that they applied to the Residential Tenancy Branch separately for compensation. The Tenant in the hearing provided that they received this information from the Landlord. This matter is not linked to this present Application of the Tenant.

One piece of the Tenant’s evidence came to the Residential Tenancy Branch on September 22. The Tenant submitted another piece to the Residential Tenancy Branch

on September 28, the day prior to the hearing. The Landlord stated they receive an additional piece from the Tenant on September 28, the day prior to the hearing. Because of the Tenant's late delivery of this item, against Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (i.e., not less than 14 days before the hearing) I omit these final pieces of evidence from consideration herein.

#### *Landlord disclosure*

The Landlord provided a record of their registered mail to the Tenant and the Tenant's guarantor on the original tenancy agreement. The Tenant/guarantor did not retrieve these pieces of registered mail. The tracking number update reveals a final notice for delivery was left with the Tenant on September 19.

I find the Tenant in error stated they received evidence and information from the Landlord; however, what they referred to was the Landlord's separate Application to the Residential Tenancy Branch, to be heard in the future.

I find the Landlord completed service of their evidence to the Tenant as required. This was within the timeline as set in Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*. Where necessary and relevant to my decision, I give full consideration to the evidence and provided by the Landlord.

#### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

Should the Tenant be unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement. The parties signed the agreement June 30, 2021 for the tenancy that began on July 1, 2021. The rent was set at \$1,900. This amount increased over the course of the tenancy to \$1,142.

The Landlord issued this Two-Month Notice on May 23, 2023. The Landlord provided a copy of the full document in the evidence after the hearing at my request. It provides the move-out end-of-tenancy date as July 31, 2023. The Tenant has resided in the rental unit through to the time of the hearing.

Page 2 of the document shows the Landlord's indication that "The rental unit will be occupied by the landlord or the landlord's close family member. . . ." They gave the additional detail that the landlord or the landlord's spouse will occupy the rental unit.

The Landlord in their hearing testimony that the owners will be moving back into the rental unit. They used to live out-of-province; however, they have moved back to BC and remain in a temporary accommodation setting, signed a more short-term agreement in that living arrangement while they wait for the Tenant to vacate. The Landlord provided a copy of the owner's own notice to end tenancy in the different province to show the legitimacy of the Landlord's premise, to show their own need for the rental unit which they own.

After serving the Two-Month Notice, the Landlord received a notice of the Tenant's Application to dispute this at the Residential Tenancy Branch. After this, their phone calls and emails to the Tenant went unanswered. This was an attempt by the Landlord to extend the end-of-tenancy date in a more favourable situation to the Tenant; however, the Landlord received no communication in return from the Tenant.

The Tenant presented their questions on the Landlord's good faith in seeking to end this tenancy, for this reason, as follows:

- the Landlord owns other properties, and has financial interests in other real estate in BC
- the Landlord's child is also a co-owner of some of the other properties owned by the Landlord

- the Landlord served the Two-Month Notice without any prior notification, coming after visits from the Landlord to the rental unit, noting needed repairs and imposing a rent increase
- the original agreement was in place with the Tenant with an agreed-upon term that the tenancy would continue until the Tenant's construction of their own home was complete, estimated to be in 2025 – this is why the Landlord required a guarantor in place as part of the tenancy agreement
- the only motivation in seeking to end this tenancy is for the Landlord to increase rent income
- the property management firm hired by the Landlord manages other rental units in the same building as the Tenant's rental unit – the Landlord ended other tenancies in these units and then listed the apartments for rent again, at substantially higher rent amounts – on checking the property management firm's background, they were fined by the regulatory body for this practice – the Tenant questioned that the Landlord's only motivation in ending this tenancy is to make money
- the Landlord's credibility in this matter is called into question with the Landlord filing, separately, a claim for compensation in a separate dispute resolution proceeding

The Landlord responded to say that they manage a separate unit in the same building, for a different owner. That other tenant in that other rental unit ended the tenancy on their own notice. In fact, the Landlord re-rented that other unit for a higher amount of rent. The Landlord clarified that the owners here, who are wanting to move into this rental unit and thus are seeking to end this tenancy, have nothing to do with other rental units in the building.

The Landlord also responded to say that the owner's son has nothing to do with the current arrangement of the Landlord wanting to move into the rental unit on their own.

The Landlord also clarified that the Tenant resides in the rental unit currently, receiving compensation in the form of a rent top-up towards the monthly rent in this interim situation. The area where the Tenant resided previously was in the process of redevelopment, prompting the relocation of this Tenant into the rental unit.

### Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

The *Act* s. 55 provides that I must grant to a landlord an order of possession if an end-of-tenancy notice complies with the s. 52 form and content requirements, and I dismiss a tenant’s application or uphold a landlord’s end-of-tenancy notice.

In this matter, the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the Landlord has met the burden to show they issued the Two-Month Notice in good faith. The Tenant did not provide sufficient evidence to show otherwise.

I find the Landlord presented evidence showing the Landlord’s actual intention to move into the rental unit. They are in a temporary housing situation until the Tenant moves out from the rental unit; I find this validates their intention to so move into the rental unit. I find the Landlord credible that their need for the rental unit is legitimate, and they have already taken substantial steps toward completing that process.

I find the Tenant made submissions that were speculative in nature on the Landlord’s motivation for ending the tenancy. The Landlord provided no proof that the owner, who hires a property management company to act on their behalf, owns other rental units in the same building. There is nothing to show that the owner – specifically the owner – ended those other tenancies on the pretext of wanting to occupy those other rental units. I give no weight to this submission by the Tenant.

The Tenant provided no proof of an agreement in place that guarantees a tenancy in this rental unit to the Tenant until the end of some other work going on. The Tenant loosely phrased it that they were constructing their own home; however, I find a more accurate description is that the Tenant has been temporarily housed elsewhere why a rezoning process is being completed.

The tenancy agreement in place between the Tenant and the Landlord reflects what is set out in the *Act*. There is thus nothing legally barring the owner from ending the tenancy in line with the *Act*, which is what has happened here.

In sum, the Tenant presented no solid evidence on the Landlord's bad faith, and there is nothing obscuring the Landlord's true motivation for seeking to end this tenancy. I dismiss the Tenant's Application in its entirety for this reason, without leave to reapply.

There is no evidence from the Tenant that outweighs that of the Landlord regarding the Landlord's stated intention. There is no information that runs counter to the Landlord's description. There is no evidence to show the Landlord made other indications to the Tenant regarding the need for the rental unit. Without such evidence of conflicting messages or other communication, there are no indications that show the issuance of the Two-Month Notice was done in bad faith.

For these reasons, I uphold the Two-Month Notice issued on May 23, 2023 and find the Landlord issued it in good faith, minus evidence to the contrary. On my review, the Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the Landlord is thus entitled to an order of possession.

The tenancy shall end with service of the Order of Possession. Because the Tenant is not successful in their Application, they are not entitled to reimbursement of the \$100 Application filing fee. Also, the tenancy will end; therefore, I make no ruling on the Landlord's compliance with the *Act*/tenancy agreement as that would be a matter for an ongoing tenancy.

### Conclusion

For the reasons set out above, I dismiss the Tenant's Application, without leave to reapply.

I grant an Order of Possession to the Landlord **effective October 31, 2023 at 1:00pm**. The Landlord must serve this Order of Possession to the Tenant. Should the Tenant not comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 4, 2023