



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** CNL, FF

### **Introduction**

This hearing was convened in response to cross applications by the tenant. The tenant applied August 05, 2010 to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) and recovery of the filing fee.

The landlord orally requested an Order of Possession in respect to the same Notice in the event I uphold the landlord's Notice to End as per Section 55 of the Act.

Both parties appeared at the hearing and had opportunity to be heard, provide affirmed testimony, and respond to the other party's submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenant questions the good faith intent of the landlord's use of the property.

### **Issue(s) to be Decided**

Is the landlord's Notice to end valid?

Is the landlord's motive for ending the tenancy the landlord's primary motive?

Should the Notice issued July 31, 2010 be cancelled?

Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

In this type of application the onus is on the landlord to show that they have given the tenant a valid Notice to End, and that they have a good faith intention to follow through as per the reason stipulated in the Notice to End.

The following relevant facts are undisputed by the parties:

- The Tenant was given the Notice to End for landlord's use of property on July 31, 2010, with an effective date of September 30, 2010.
- The Notice to End was given to the tenant by the building manager of the residential complex, on behalf of the landlord proper.
- The stated reason on the Notice for ending the tenancy is stipulated as:

*The rental unit will be occupied by the landlord or the landlord's spouse or close family member of the landlord or the landlord's spouse.*

The landlord provided affirmed sworn testimony that he is the landlord, and that he intends, in good faith, that the unit will be occupied by his spouse. He submitted that he and his wife are separating and that she will be moving into the rental unit. The landlord testified that this intent has been the sole intent.

The tenant testified that when the building manager gave him the Notice to end, he told the tenant that a nephew of the landlord would be occupying the rental unit. The tenant relied on the building manager's version, therefore determined to dispute the Notice to end. The tenant has not provided any supporting evidence contrary to the landlord's sworn testimony and sworn good faith intention.

### **Analysis**

A landlord may end a tenancy for their use of the property. The Landlord intends for the rental unit to be occupied by his spouse.

The reason given to end the tenancy in the Notice is based upon section 49(3) of the Act which provides:

(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.

Section 49(1) of the Act states:

**49** (1) In this section:

**"close family member"** means, in relation to an individual,

(a) the individual's father, mother, spouse or child, or

(b) the father, mother or child of that individual's spouse;

I must determine whether the Landlord has met the criteria of section 49(3) which I characterize as a two part test: firstly, that the landlord truly intends for the rental unit to be occupied by his spouse; and secondly, that the Landlord does not have an ulterior motive for seeking to have the tenant vacate the unit.

On the face of the evidence and on the balance of probabilities, **I find** the landlord has met the first test. I accept the landlord truly intends to personally occupy the rental unit.

The tenant brought into question the landlord's evidence – choosing to believe the comment from the building manager that a nephew of the landlord would occupy the rental unit. The hearing did not have benefit of the building manager's input or, if applicable, their reasons, or motives for their comments to the tenant. The tenant did not propose that the landlord has a hidden agenda in respect to the occupancy of the rental unit,. Other than their belief based on the purported comment from the building manager.

None the less, when the "good faith" intent of the landlord is brought into question the burden is on the landlord to establish that they truly intend to do what the landlord indicates on the Notice to End, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy, as the landlord's *primary* motive. I find that If an ulterior motive should exist, I do not believe that an ulterior motive is the landlord's *primary* motive for ending the tenancy. I believe the *primary* motive is the reasons stated in the Notice to End Tenancy, and the motive to which the landlord testified: the

suite is requires for occupancy by his spouse. As a result, I find the landlord has met the requirements of having acted in “good faith” in issuing the notice, and that the landlord intends in good faith for the suite to be occupied by the spouse.

I accept and find the landlord’s Notice to End Tenancy for Landlord’s Use of Property, valid. The landlord intends in good faith to occupy the rental unit for the stated reasons and that he will provide the tenant with one month’s rent to which they are entitled.

Therefore, the landlord’s Notice to End dated July 31, 2010 with the effective date of September 30, 2010 is upheld. The landlord is entitled to an **Order of Possession**. The landlord will serve the tenant with the Order of Possession and the tenancy will end in accordance with the Order. The tenant’s application effectively is **dismissed**.

### **Conclusion**

**I grant** an Order of Possession to the landlord **effective September 30, 2010**. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The tenant’s application is **dismissed** without leave to reapply.

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*.

---