



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes** CNL, FF

### **Introduction**

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property.

The tenant also applied for an order seeking landlord's action to comply with the *Act*.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

At the start of the hearing, I asked the landlord if there was any change in his position, from the date that the tenant had filed this application. The landlord stated that there was no change and he still intended to pursue his plan of converting the basement into a fitness room and media room. The landlord requested that he be granted an order of possession, in the event that the notice to end tenancy was upheld.

The rental unit is located in the basement of the house owned and occupied by the landlord. The landlord lives on the upper level along with his spouse and two children. The landlord also has possession of part of the basement for his own use.

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

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to occupy the rental unit?

### **Background and Evidence**

The landlord issued the Tenant a two month notice to end tenancy, on September 20, 2010, to be effective on December 01, 2010.

The reason the landlord gave the notice to the tenant is described as, the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The tenant has alleged the landlord is issuing the notice in bad faith, and has no intention of converting the unit to contain fitness and media rooms as he currently uses the other part of the basement for these purposes.

The tenant stated that she has several problems that make it very difficult to find suitable alternative accommodation. The tenant described her problems which include the difficulty finding a unit that has a thermostat in the rental unit, lack of a computer to find advertised vacancies, low numbers of vacancies advertised in the local papers etc. She also stated that being on a fixed income; she was unable to bear the financial burden associated with a move.

The landlord stated on August 16, 2010, he received a gift of \$100,000 from his father which he used to pay down his mortgage. In addition, his daycare expenses were reduced due to his children entering full time school in September 2010. For these reasons, the landlord stated that he no longer needed the rental income and he decided to expand his fitness room and install a media room in the basement for use by himself and his family. The landlord filed documents to support his testimony.

### **Analysis**

When the Tenant alleges bad faith on the part of the Landlord, the Landlord has an onus to prove they are acting in good faith. I find that the landlord has filed evidence to support his testimony that he was no longer in need of rental income and intended to gain possession of the entire basement for personal use.

The tenant argued that the landlord had failed to act in good faith and in the absence of any evidence to support this allegation; I find the landlord has met the good faith requirement of the legislation and intends to renovate the basement for his personal use.

### **Conclusion and Order**

For the reasons given above, I dismiss the tenant's application.

At the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the 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 Notice to End Tenancy is upheld and I grant the Landlord an order of possession effective on or before **1:00 p.m. on December 01, 2010.**

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: November 02, 2010.

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Dispute Resolution Officer