



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNL, MNDC, OLC, RP, PSF, LRE

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use; a monetary order for damage or loss under the Act; an order the landlord comply with the Act and make repairs, that the landlord provide service or facilities required by law and that conditions be set on the landlord's right to enter the unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I considered all of the testimony and relevant written submissions.

### Preliminary Matters

The tenant submitted evidence to the landlord the day prior to this hearing; that evidence was given to the Residential Tenancy Branch on February 4, 2013. The landlord had not had sufficient time to review that evidence; therefore, as it was not given to the landlord at least 5 days prior to the hearing the evidence was set aside. The tenant was at liberty to make oral submissions.

At the start of the hearing the tenant requested a summons for the landlord's daughter and her fiancé. The tenant wished to question the family members as to why they could not locate accommodation elsewhere; the tenant also wanted to question the family members in relation to their current living situation and availability of other housing.

I explained that the Residential Tenancy Branch (RTB) policy does not allow a summons to be issued for the purpose of a "fishing expedition," or for reasons that are not relevant. I explained to the tenant that the questions the tenant wished to pose would not impact my decision; that the current living situation of the family member, or the availability of other housing options were not before me to decide. I explained that the landlord must prove that a close family member will occupy the unit. Therefore, the

request for a summons was denied. The tenant was at liberty to pose her questions in relation to housing options, to the landlord.

The tenant indicated a number of matters of dispute on her application and confirmed that the main issue to deal with during this proceeding is the Notice to End Tenancy. The tenant confirmed that the most important matter was the portion of her application requesting cancellation of the Notice ending tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to set aside or cancel the 2 Month Notice to End Tenancy for Landlord's Use and I dismissed the balance of the tenant's claim with leave to re-apply.

#### Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use issued on January 1, 2013 be cancelled?

#### Background and Evidence

The tenancy commenced on July 1, 2012; rent in the sum of \$950.00 is due on the 1<sup>st</sup> day of each month. The tenant said she completed the standard RTB tenancy and that the parties then signed the agreement on July 24 and July 28, 2012. A copy of the agreement was supplied as evidence; it included a month-to-month term.

The tenant confirmed that on January 1, 2013 she received a 2 Month Notice to End Tenancy for Landlord's Use of the Property. The tenant disputed the Notice on the 15<sup>th</sup> day after she received the Notice.

The Notice indicated that a close family member of the landlord's was to occupy the unit and that the tenant must vacate the unit by February 28, 2013.

The landlord explained that they are a blended family; each landlord has 2 children. The male landlord's daughter has recently become engaged to married and she and her fiancé now plan on relocating into the rental unit of the home so they may save for their wedding and a down-payment for a home.

The landlord and his daughter will now be able to commute together, as they work in the same area; this will allow them to use the HOV lanes during the commute. The landlord's daughter and fiancé currently reside with the fiancé's mother; a situation that is unsuitable. The daughter's fiancé has also been transferred to work location that is closer to the landlord's home.

The landlord supplied a copy of a letter signed by their daughter explaining that she and her fiancé would move into the basement unit in her parents' home; they plan to stay for

approximately 2 years. The daughter indicated they plan to save money toward their marriage and a down-payment. The note was signed by the landlord's daughter.

The tenant brought forward a number of concerns in relation to the Notice; including:

- The availability of alternate rental options for the landlord's daughter;
- The advantage of allowing the tenant to remain in the unit and then using the rent money to allow the daughter to purchase a home in the area;
- On-going health problems that the tenant is experiencing;
- The stress and upset a move will cause to the tenant;
- A move is not supported by the tenant's physician;
- The landlord's failure to abide by an assurance given at the start of the tenancy that the tenancy would be long-term;
- The difficulty the tenant will have in seeking a new unit, given she is 79 years of age; and
- The stress and physical challenges that the tenant faces and the fact she uses a walker to aid mobility.

The tenant is upset that the landlord would allow her to take possession of the unit when they knew she wanted a long-term tenancy; and to then evict her. The tenant believes that the landlord planned all along to move their daughter into the unit; but the tenant also said that she was not certain the daughter would in fact occupy the unit.

The tenant mentioned she had recently been given a ride to the store by the landlord's son, who said he was not aware the tenant had been given a notice ending her tenancy. The landlord's son told the tenant he understood his sister was having some problems with her current living situation.

The landlord said they would not have intentionally misled the tenant and that they had no previous plans to evict the tenant or move their daughter into the unit. The landlord indicated no interest in pursuing other housing options for their daughter and indicated that they want the unit available for their daughter by March 31 or April 1, 2013.

### Analysis

After considered all of the relevant evidence and testimony I find, on the balance of probabilities that the landlord intends to have their daughter live in the rental unit and that the 2 Month Notice to End Tenancy for Landlord's use of the Property is of full force and effect. Therefore, I find that the tenant's application is dismissed.

I have based this upon the testimony of the landord and the letter issued by the landlord's daughter; which indicated that she will occupy the unit with her fiancé. The landlord's daughter is now engaged to be married and wishes to save money for her wedding and a down-payment for a home purchase. I find that these reasons appeared sensible; reasonable and believable.

I have considered the tenant's submission and her attempts to suggest options to the landlord that would allow the tenant to remain in the unit. These submissions led me to conclude that the tenant does not in fact believe that the landlord's daughter will not live in the unit. If the tenant thought the landlord's daughter was not moving in or was not wishing to vacate her current residence, it seems highly unlikely the tenant would offer alternate housing suggestions. The tenant's submissions led me to conclude that her objections to the Notice are largely in relation to her overall health, her level of stress and her expectation she would have a long-term tenancy.

During the hearing I explained that a month-to-month tenancy does not bring any sense of security in relation to a long-term tenancy term. I told the tenant that when she signed a month-to-month tenancy she was free to give proper notice ending the tenancy, as was the landlord entitled to give notice. I also explained that the legislation does not take into consideration the health of either party; the landlord or a tenant. While the tenant may find this process stressful and untenable; her health or mobility concerns are not factors that are contemplated by the legislation. If the landlord complies with the Act and intends to have their daughter occupy the unit; then the landlord is entitled to take possession of the unit by issuing the 2 Month Notice ending tenancy.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to March 31, 2013.

During the hearing the landlord said that at the end of March or on the 1<sup>st</sup> day of April, 2013 they want their daughter to be able to move into the unit. I find that this is the equivalent of the landlord requesting possession of the unit.

Section 55(1) of the Act provides:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice*

As the landlord said that they want the unit ready for their daughter to move in effective March 31 or April 1, 2013, I find, pursuant to section 55(1) of the Act, that the landlord is entitled to an Order of possession that is effective March 31, 2013.

The landlord has been granted an Order of possession that is effective **at 1 p.m. on March 31, 2013**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The tenant's application to cancel the 2 Month Notice to End Tenancy for Landlord's use issued on January 1, 2013 is dismissed.

The 2 Month Notice to End Tenancy for Landlord's Use issued on January 1, 2013 is of full force and effect. The landlord is entitled to an Order of possession.

The balance of the tenant's application is dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 11, 2013

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Residential Tenancy Branch

