



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenants' application pursuant to section 49 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice). The male tenant (the tenant) testified that the landlord handed him the 2 Month Notice on June 27, 2013. The landlord's agent (the agent) testified that the landlord received a copy of the tenants' dispute resolution hearing package on July 11 or 12, 2013, when the tenant handed the landlord that package. The tenant confirmed that the landlord handed him a copy of the landlord's written evidence. I am satisfied that the parties served one another with the above documents in accordance with the *Act*.

At the commencement of this hearing, the agent requested an Order of Possession based on the 2 Month Notice.

### Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

This periodic tenancy for a basement suite in the landlord's house began on July 4, 2012. Monthly rent is set at \$1,100.00, payable in advance on the 4<sup>th</sup> of each month. The landlord continues to hold the tenants' \$550.00 security deposit paid on or about July 4, 2012.

The tenants' only written evidence was the following information provided in the Details of the Dispute section of their application for dispute resolution:

*Landlord came into rental unit illegally without notice, then snooped through unit and found our small dog's litter of 3 pups! That morning he gave me a verbal notice of eviction, then followed up 2 days later with 2 month notice to end tenancy for landlord use of property.*

The landlord provided the following explanation of his reasons for issuing the 2 Month Notice in his written evidence:

*...Asked tenants to come upstairs to have a talk.*

*Explained that my daughter had lost her son to cancer. That was in Feb. 2013.*

*Both she and her husband are very unhappy in their home because of all the memories. I like to be in a position to invite them into my house. All I am asking for is to have my house back...*

The agent testified that the landlord intends to have his daughter move into the basement suite. He said that the landlord expects that it will take some time to prepare for her move. As the landlord's daughter is currently renting, the agent said that she would need to give her one month's notice to her landlord to end her tenancy. The agent said that expected that the landlord's daughter would be able to move into the basement suite currently occupied by the tenants as of October 1, 2013. The agent maintained that the incidents cited by the tenants in their application with respect to the tenants' dogs has no bearing on the landlord's intention to move his daughter into this rental unit.

### Analysis

Sections 49 and 55 of the *Act* allow a landlord to end a tenancy when:

the landlord or a close family member of the landlord intends in good faith to occupy the rental unit;

The landlord's 2 Month Notice, entered into written evidence, identified the following reason for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he truly intends to do what he has indicated on the Notice to End Tenancy, and that he is not acting dishonestly or with an ulterior motive as his primary motive

Although I have given consideration to the tenant's claim that the landlord issued the 2 Month Notice as a result of his discovery of the landlord's dog and three puppies in the rental unit, I am satisfied that the landlord has provided adequate evidence to explain why he needs the rental unit for his daughter's living accommodations. I find this to be reasonable and I accept the landlord's evidence that he intends, in good faith, to have his daughter occupy the rental unit. I find that the tenants' claims that the landlord has illegally entered the premises a number of times to view the rental unit has little relevance to whether or not the landlord truly intends to move his daughter into this rental unit. I therefore dismiss the tenants' application to set aside the Notice to End Tenancy.

At the hearing, the parties confirmed that the tenants have not paid their August 2013 rent. As mentioned at this hearing, section 51(1) of the *Act* allows the tenants to forego paying their last month's rent when the landlord issues a 2 Month Notice.

In addition, I reminded the parties of the following provisions of section 51(2) of the *Act*, which reads in part as follows:

**51** (2) *In addition to the amount payable under subsection (1), if*

*(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,*

*the landlord, ... must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

Section 55(1) of the *Act* reads as follows:

**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 I have dismissed the tenants' application to set aside the landlord's 2 Month Notice, I issue an Order of Possession to the landlord to take effect on the corrected effective date of the landlord's 2 Month Notice, September 4, 2013.

Conclusion

I dismiss the tenants' application to set aside the landlord's 2 Month Notice. I issue an Order of Possession to take effect by 1:00 p.m. on September 4, 2013, which the landlord or his agent must serve to the tenant(s). Should the tenant(s) 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: August 09, 2013

---

Residential Tenancy Branch

