



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNL / OPL

### Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a 2 month notice to end tenancy for landlord's use of property. Both parties attended and gave affirmed testimony. During the hearing the landlord confirmed that she seeks an order of possession in the event the tenant's application does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The unit which is the subject of this dispute is 1 of 2 houses located on the property. The landlord currently occupies the other house.

There is no written tenancy agreement in evidence for this tenancy which began on April 15, 2014. Monthly rent of \$730.00 is due and payable in advance on the first day of each month. Neither a security deposit nor a pet damage deposit was collected.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy. While the notice appears to be dated October 11, 2014, the landlord testified that it is meant to be dated October 01, 2014. The notice was served by way of posting on the unit door on October 01, 2014. The tenant's application to dispute the notice was filed on October 16, 2014, which is the date when she claims in her application that she found the notice. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is November 30, 2014. The reason identified on the notice in support of its issuance is as follows:

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.

During the hearing the landlord testified that it is her intention to occupy both houses on the property.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)

Section 49(3) of the Act provides as follows:

49(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.

Based on the documentary evidence and testimony, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property dated October 01, 2014. As the notice was served by way of posting on the unit door on that same date, pursuant to section 90 of the Act, which speaks to **When documents are considered to have been received**, I find that the notice is deemed to have been received 3 days later on October 04, 2014. Pursuant to section 49(8) of the Act, the tenant had 15 days after receiving the notice to dispute it. I find that as the tenant's application to dispute the notice was filed on October 16, 2014, her application was filed in a timely manner.

Based on the affirmed testimony of the landlord, I am satisfied that the landlord's notice was issued in good faith, and that her intention is to use the unit as documented on the 2 month notice.

Section 55 of the Act addresses **Order of possession for the landlord**, in part:

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.

Following from all of the above, the tenant's application is hereby dismissed, and I find that the landlord has established entitlement to an **order of possession**.

Pursuant to section 53 of the Act which addresses how **Incorrect effective dates automatically changed**, I find that the effective date of the notice is December 31, 2014.

Section 51 of the Act addresses **Tenant's compensation: section 49 notice**. As discussed with the parties during the hearing, in circumstances where a 2 month notice has been issued, the tenant may withhold payment of the last month's rent. Accordingly, the tenant may withhold payment of rent for December 2014. However, in the circumstances of this dispute, it is understood that rent has not been paid for November 2014, and it is left to the parties to resolve that particular matter in consultation with Ministry staff.

#### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **December 31, 2014**. This order must be served on the tenant. 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.

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: December 01, 2014

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Residential Tenancy Branch

