



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant – CNL, MNDC, FF

For the landlord – OPL, FF, O

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for to cancel a Two Month Notice to End Tenancy for Landlords Use of the Property, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for Order of Possession for landlords use of the property; other issues; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Preliminary Issues

The tenant requested a new date to allow the tenant to present his case or have new information provided to him so that he may provide evidence on this matter within the 15 days period that he is allotted to do so. In considering the tenant's request I explained to the tenant that the landlords filed their cross application on September 01, 2015 and served the tenant with their hearing package on September 03, 2015. All evidence must be sent to the tenant from the landlords seven days prior to the hearing pursuant to rule 3.3 of the Rules of Procedure. As the landlords have complied with rule 3.3 I am not prepared to adjourn the hearing today to allow the tenant more time to provide additional evidence.

Issue(s) to be Decided

- Is the tenant entitled to an Order cancelling the Two Month Notice to End Tenancy?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to an Order of Possession?

Background and Evidence

The parties agreed that this month to month tenancy started on February 01, 2008. Rent for this unit is \$1,300.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$650.00 sometime before the start of the tenancy.

The landlord RS gave testimony on behalf of both landlords and testified that a Two Month Notice was served upon the tenant on June 24, 2015. This Notice has an effective date of August 31, 2015 and informed the tenant that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The landlord testified that the house had been on the market for sale. The landlords owned a larger house as their principal residence. They decided to sell the principal residence instead as it is a larger home and has a large yard and has stairs. If they moved into the rental house they could live debt free and have less yard work and no stairs to deal with. The landlord testified that on June 24, 2015 the listing was suspended for the rental house and the landlords and real estate agent signed a Change Order Form which withdrew the house from sale on June 29, 2015. The landlords have provided a copy of the Change Order Form in which it states that the house has been withdrawn from the market due to a change of plans. This form is signed and dated by both landlords and the real estate agent.

RS testified that the For Sale sign was removed from the outside of the property and the tenant was informed of the landlord's decision on June 24, 2015. RS testified that the tenant paid rent for August which was accepted by the landlords for use and occupancy only and a letter was given to the tenant to this effect. RS referred to a work order, provided in their documentary

evidence, showing that they intend to start some work on an additional parking area for their truck and trailer and they have also provided a quote for a wood burning stove to go into the rental house in October, 2015. The landlords seek an Order of Possession for September 30, 2015 and RS testified that the tenant would not be required to pay rent for September as compensation for the Two Month Notice.

The tenant disputed the landlord's testimony and testified that the landlords are not acting in good faith. The tenant referred to a previous hearing held on June 23, 2015 in which the landlords had attempted to evict the tenant by way of a different Two Month Notice in which the landlords had indicated that all conditions of sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit. This private sale did not go through and the landlords then listed the house again with a realtor. The tenant testified that he was served the second Two Month Notice and this time the landlords are stating that they want to live in the rental house.

The tenant testified that the landlords did remove the For Sale sign but the house was still listed on MLS. The tenant contacted someone from the Real Estate Board who informed the tenant that the house was not removed from MLS until July 24, 2015 and was still up for sale. According to the Real Estate Board if a property is removed from sale the listing is taken down within 24 hours. The tenant referred to evidence showing the house was still listed on July 24, 2015.

The tenant testified that the landlords could have changed the date on the Change of Order Form and as the tenant believes the landlords are not acting in good faith the tenant seeks to have the Notice to End Tenancy cancelled. The tenant further testified that he has now found alternative accommodation which he can move into on November 01, 2015.

The landlords call their witness AS. AS is the landlords' realtor. AS testified that the house listing was suspended on June 24, 2015 after a conversation with the landlords. There were no showings of the property after that date. The landlords had decided to sell their larger home instead, an evaluation was conducted on July 03, 2015 for their larger home and an offer was made on September 18, 2015 is currently being negotiated for that larger home. The landlords

and AS signed a Withdrawal Notice and this was turned into the Real Estate Board. It is then up to the Real Estate Board to pull the listing from the web site. The evidence provided by the tenant shows a listing on a board from the Canadian Real Estate Board which is a different site.

The tenant seeks a Monetary Order for \$2,600.00 in compensation because the landlords are trying to remove the tenant from his home. In having to deal with this the tenant's work has been affected and he has not been able to bring in as much money. The tenant testified that as the landlords have not acted in good faith for either of the Notices given to evict the tenant the tenant seeks compensation in having to deal with these Notices.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the respective claims concerning the Two Month Notice to End Tenancy; the tenant has called the landlords' good faith into question as to the reason they have put on the Notice to End Tenancy. The tenant provided evidence about a previous hearing that took place in June, 2015 when the landlords served the tenants with the first Two Month Notice citing a different reason to end the tenancy. I refer the parties to the Residential Tenancy Policy Guidelines #2 which provides guidance when the landlords' good faith is called into question. This guidelines states, in part, that

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- A local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I have considered the evidence before me and the testimony heard from both parties and the landlords' witness. I am satisfied that the landlords' intent to sell the rental house changed and in fact they have now had an offer on their principal residence. I am further satisfied that the landlords did sign the relevant forms provided to them by their realtor to withdraw the rental house from sale on June 29, 2015. If the listing was not removed by the Real Estate Board until later in July, 2015 this does not show the landlords did not act in good faith but could merely be an oversight on behalf of the Real Estate Board or a delay in the process in removing the listing.

Consequently I am satisfied that the landlords have established that they do intend to occupy the rental unit and no ulterior motive or dishonest intent has been proven. As such I uphold the Two Month Notice to End Tenancy and issue the landlords with an Order of Possession effective September 30, 2015 pursuant to s. 55 of the *Act*.

The tenant's application to cancel the Notice is therefore dismissed without leave to reapply.

With regard to the tenant's application for a Monetary Order for \$2,600.00; I refer the parties to a case dealt with in the Supreme Court of Whiffin v. Glass & Glass (July 26, 1999). In this case it was held that attempts by the landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as a landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that the landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is

wrong. The tenants remedy would be to dispute the notice ending the tenancy once given. Consequently, in this matter I find the landlords are entitled to issue Notices to End Tenancy even if they are wrong and the tenant's claim for compensation in dealing with these notices, filing applications or providing evidence must be done if the tenant seeks to have the Notices cancelled. Compensation cannot be awarded to the tenant if the landlords serve the tenant with Notices and if the tenant spends time in dealing with them. This section of the tenant's claim is dismissed without leave to reapply.

I do; however, draw the parties' attention to s. 51(2) of the *Act* which states:

*(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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.*

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlords are provided with a formal copy of an Order of Possession. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I find that the landlords are entitled to be reimbursed for the **\$50.00** cost of filing this application pursuant to s. 72(1) of the *Act*. I Order that the landlords retain this amount from the security deposit and interest and the balance must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

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: September 22, 2015

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Residential Tenancy Branch

