



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNL

### Introduction

The hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property.

The female Tenant stated that sometime in October of 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted with the Application were posted on the door of the Landlord's suite in the residential complex. The Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

On November 19, 2015 the Landlord submitted 34 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants by registered mail on November 19, 2015. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be set aside?

### Background and Evidence

The Landlord and the Tenants agree that:

- the Tenants moved into the rental unit approximately 4.5 years ago;
- the parties entered into a new written tenancy agreement for a fixed term that ran from October 01, 2014 to September 30, 2015;
- the tenancy agreement stipulated that the tenancy would continue on a month-to-month basis after September 30, 2015;

- the current rent is \$1,793.75 plus \$350.00 for utilities;
- rent is due by the first day of each month;
- the Landlord posted a Two Month Notice to End Tenancy on the door of the rental unit on October 06, 2015;
- the Notice to End Tenancy declared that the Tenants must vacate the rental unit by January 01, 2016; and
- the reason for ending the tenancy that was cited on the Notice to End Tenancy was that 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 Landlord stated that:

- he currently resides, part time, in a suite in the lower portion of the residential complex;
- he currently resides, part time, in Burnaby;
- until approximately one year ago he was in a personal relationship with the woman he shares accommodations with in Burnaby;
- after that personal relationship ended he continued to share accommodations with this woman on a "room and board" basis;
- he is self-employed and he works primarily in the interior region of British Columbia;
- until recently he has been also working in the lower mainland;
- the majority of his work is now in the interior region;
- it is now more convenient for him, for professional reasons, to live primarily in Kamloops; and
- because he intends to live primarily in the interior he wishes to move from the suite in the lower portion of the residential complex into the rental unit, which is a larger unit.

In support of his submission that he intends to live primarily in Kamloops, the Landlord submitted an email from one of his clients, dated November 10, 2015. In this email the author indicates he is pleased the Landlord is moving back to Kamloops. The male Tenant argued that this evidence could have easily been fabricated or misconstrued to give the impression that the Landlord is moving back to Kamloops.

In support of his submission that he intends to live primarily in Kamloops, the Landlord submitted a letter from the woman he currently resides with, in which she declares he is living in her home in a "room and board situation", which will end no later than January 01, 2016. The male Tenant argued that this evidence could have easily been fabricated, given the Landlord's personal relationship with the author.

In support of his submission that he intends to live primarily in Kamloops, the Landlord submitted a copy of a tenancy agreement between him and the woman he currently resides with, which declares the tenancy ends on September 30, 2015. The male Tenant argued that this evidence could have easily been fabricated, given the Landlord's personal relationship with the author.

In support of his submission that he intends to move back into the rental unit, the Landlord submitted a copy of a letter to a storage company in Kamloops, which declares that he will be vacating his storage unit on February 05, 2016. The Landlord stated that he will no longer need the storage unit because he will have more room to store his property in the rental unit.

In support of his submission that he intends to move to Kamloops, the Landlord submitted an electronic quote for the cost of moving from the lower mainland to the rental unit. The male Tenant argued that this is simply a quote which does not indicate payment has been made.

The female Tenant argued that the Landlord's accommodations in the lower portion of the residential complex are nice and should suit the Landlord's needs and they simply do not believe he intends to move into their rental unit.

The Landlord and the Tenants agree that this tenancy was the subject of a dispute resolution hearing on October 01, 2015. The Tenants submitted a copy of the decision from that hearing. The file numbers related to that hearing are recorded on the first page of this decision.

The Landlords and the Tenants agree that at the hearing on October 01, 2015 the Arbitrator considered the Landlord's application for an Order of Possession on the basis of a Two Month Notice to End Tenancy for Landlord's Use of Property that was dated May 11, 2015. The parties agree that this Notice to End Tenancy was set aside because it attempted to end the tenancy prior to the end of the fixed term of the tenancy agreement, which did not end until September 30, 2015.

The Landlords and the Tenants agree that at the hearing on October 01, 2015 the Arbitrator set aside a One Month Notice to End Tenancy for Cause, dated August 29, 2015.

The Tenants contend that the Landlord served this second Two Month Notice to End Tenancy simply because he was unsuccessful in end the tenancy for cause. The Landlord submits that he has been attempting to end this tenancy since May of 2015 because he wishes to move back into the rental unit.

### Analysis

Section 49(4) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the testimony of the Landlord I am satisfied that the Landlord intends to move into the rental unit. I found his testimony to be forthright and consistent and that the reasons given for moving into the rental unit were entirely credible.

In adjudicating this matter I was heavily influenced by the documentary evidence submitted by the Landlord, which supports his submission that he intends to move into the rental unit. Although the Landlord could easily cancel his notice to end his storage contract and he is not obligated to move his property with the moving company that provided him with a quote, these documents tend to establish that the Landlord is making arrangements to move into the rental unit. I find that the Tenants have submitted no evidence to support their submission that the Landlord's evidence is fabricated or that it can be misconstrued.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord did not serve this Notice to End Tenancy in good faith. The evidence shows that the Landlord attempted to end this tenancy in May of 2015 by serving the Tenants with a Two Month Notice to End Tenancy but was unable to do so at that time because the parties had a fixed term tenancy agreement, the fixed term of which did not end until September 30, 2015. In my view this establishes that the Landlord has wanted to move into the rental unit for several months.

I find it reasonable that the Landlord would wait until the end of the fixed term tenancy to serve a second Two Month Notice to End Tenancy. In my view service of the first Two Month Notice to End Tenancy establishes that this has been the Landlord's long term goal and that it is not a reaction to something that has gone awry with the tenancy.

The Landlord and the Tenants are reminded of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Landlord and the Tenants are also reminded of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenant the equivalent of two month's rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

As I cannot conclude that the Two Month Notice to End Tenancy has not been served in good faith and/or that the Landlord does not intend to move into the rental unit, I dismiss the Tenant's application to set aside this Notice to End Tenancy.

The Landlord requested an Order of Possession at the hearing and I grant that request pursuant to section 50(1) of the *Act*.

Section 49(2) of the *Act* stipulates that a Two Month Notice to End Tenancy must end a periodic tenancy on a date that is not earlier than two months after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. The Two Month Notice to End Tenancy declared that the tenancy will end on January 01, 2016, which is not the day before the day in the month the rent is due.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. I therefore find that the effective date of this Two Month Notice to End Tenancy must be corrected to January 31, 2016.

### Conclusion

I grant the Landlord an Order of Possession that is **at 1:00 p.m. on January 31, 2016**. This Order may be served on the Tenant, filed with 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 17, 2015

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Residential Tenancy Branch

