



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LTE Ventures Inc.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes: OPL, MNR, MNSD, FF  
MT, CNL

### Introduction

This hearing was scheduled in response to 2 applications:

- i) by the landlord for an order of possession for landlord's use of property / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee; and
- ii) by the tenant for more time to make application for cancellation of a notice to end tenancy / and cancellation of a notice to end tenancy for landlord's use of property.

Both parties attended and / or were represented and gave affirmed testimony.

### Issue(s) to be Decided

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

### Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on July 01, 2005. Monthly rent of \$923.00 is due and payable in advance on the first day of each month, and a security deposit of \$380.00 was collected.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated September 28, 2015. The notice was personally served on that same date. 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, 2015. The reason identified on the notice in support of its issuance is as follows:

The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The tenant filed an application to dispute the notice on November 01, 2015, and later amended it on November 04, 2015. In the application the tenant notes that the application to dispute the landlord's notice was filed late, and the tenant has therefore requested more time to make an application to cancel the notice. Tenant "JC" testified that she and her husband ("CH") were not sufficiently aware of the statutory 15 day limit for disputing the notice, and that this was a factor leading to the late application.

Further, the tenant challenged the landlord's good faith intent in issuing the notice, claiming that there were / are other units available and located within the 3 storey building which would satisfy the landlord's need to accommodate a caretaker. Research undertaken by the tenant concerning the availability and location of other units appears to have been done sometime after the notice was served. The tenant also claims that the landlord is motivated to end the tenancy in order to be able to assess a higher rent.

The landlord's agents take the position that the subject unit is the one best suited for use by a caretaker, in large part for reasons related to security, and they dispute the tenant's claims that the landlord's reasons for wanting to end the tenancy extend beyond this, and are improper in some manner.

### Analysis

Section 49(6) of the Act [**Landlord's notice: landlord's use of property**] provides in part:

49(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

Further, sections 49(8) and 49(9) of the Act provide as follows:

49(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

I note that the following information is provided on page 2 of what is a 2 page "2 month notice to end tenancy for landlord's use of property:"

**INFORMATION FOR TENANTS WHO RECEIVE THIS NOTICE TO END TENANCY**

- You have the right to dispute this Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An Arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application for Dispute Resolution within 15 days, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of this Notice (You can move out sooner). If you do not file the Application or move out, your landlord can apply for an Order of Possession that is enforceable through the court.

As the landlord's 2 month notice was personally served on September 28, 2015, I find that the tenant had until October 13, 2015 (the 15<sup>th</sup> day after service) to file an application to dispute the notice. However, as the tenant's application was filed on November 01, 2015, I find that the application was filed late.

Section 66 of the Act addresses **Director's orders: changing time limits**, in part:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) *[starting proceedings]* or 81(4) *[decision on application for review]*.

I find that the tenant's failure to take note of the 15 day appeal period in a timely manner does not constitute exceptional circumstances.

Following from all of the above, I find that the tenant's application for more time to make an application to cancel a notice to end tenancy must be dismissed, as must the tenant's application to cancel a notice to end tenancy for landlord's use of property. Further, I am unable to conclude there is an absence of good faith intent on the part of the landlord in issuing the notice. In the result, I find that the landlord has established entitlement to an order of possession, which is to be effective **January 31, 2016**.

As the landlord has succeeded in the application for an order of possession, I find that the landlord has also established entitlement to recovery of the **\$50.00** filing fee. I order that this amount may be withheld from the tenant's security deposit. Pursuant to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**, the disposition of the balance of the security deposit should be determined at such time as tenancy ends. In the meantime, the landlord's application to retain the balance of the security deposit is hereby dismissed with leave to reapply.

The parties confirmed that rent has been paid to the end of December 2015. However, the landlord is presently unable to confirm that the tenant's rent cheque for January 2016 will clear. In the meantime, the landlord's application for a monetary order reflecting compensation for unpaid rent for January 2016 is hereby dismissed with leave to reapply.

Finally, the attention of the parties is drawn to the following sections of the Act:

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 51: **Tenant's compensation: section 49 notice**

#### Conclusion

Both aspects of the tenants' application are hereby dismissed.

I hereby issue an **order of possession** in favour of the landlord effective **January 31, 2016**.

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.

The landlord is ordered that he may withhold **\$50.00** from the tenant's security deposit in order to recover the filing fee. The landlord's application to retain the balance of the security deposit is hereby dismissed with leave to reapply.

The landlord's application for a monetary order as compensation for unpaid rent is hereby dismissed with leave to reapply.

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: January 05, 2016

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Residential Tenancy Branch

