



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL FF

### **Introduction**

This hearing was convened in response to an application by the tenant under the *Residential Tenancy Act* (the Act) to cancel the landlord's 2 Month Notice to End for landlord's use (the Notice) dated January 18, 2016 and recover the filing fee.

Both parties attended the hearing. The landlord was assisted by legal counsel. The parties were given opportunity to settle their dispute, to no avail. The hearing proceeded on the merits and the parties were permitted opportunity to present relevant evidence, and make relevant submissions. Both parties acknowledged and confirmed receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Is the landlord's Notice to End for Landlord's Use valid?

### **Background and Evidence**

The *relevant* evidence in this matter is as follows. The tenancy began in October 2012. Rent in the amount of \$1650.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$800.00.

The landlord personally gave the tenant a 2 Month Notice to End Tenancy for Landlord's Use (Notice to End), dated January 18, 2016 on January 24, 2016 pursuant to Section 49(5)(c) of the Act, with an effective date of April 01, 2016.

The evidence is that after the landlord and purchaser satisfied the conditions for sale and prior to issuing the Notice to End, the landlord had informed / provided the tenant with a written request from the purchaser dated January 09, 2016, that the landlord provide the tenant with legal notice to end the tenancy and they would take vacant possession April 02, 2016.

The tenant testified that prior to receiving the Notice to End, they received information which in their determination indicated the named purchaser would not be personally occupying the unit. In response the landlord stated the purchaser's *realtor* had informed them the purchaser or a qualified family member intended to occupy the unit. The landlord submitted into evidence the *realtor's* statement and other documents to equal effect. The landlord advised if necessary the *realtor* could provide testimony the purchaser or a qualified family member intends in good faith to occupy the unit. I accepted the landlord's information the *realtor* had thus informed the landlord, and would equally inform the hearing.

Upon receiving the Notice to End on January 24, 2016 the tenant immediately determined to dispute it. The tenant argues they questioned the purchaser's intentions, and considered the purchaser's request to the landlord - they give legal notice to the tenant to vacate - as insufficient authority to the landlord to do so.

The landlord testified that on receiving the tenant's dispute package January 27, 2016 they immediately sought and received a more complete request from the purchaser on January 29, 2016 – titled, TENANT OCCUPIED PROPERTY – BUYERS NOTICE TO SELLER FOR VACANT POSSESSION (BC Real Estate Association form BC 2032 - Buyers Notice). The tenant acknowledged receiving copy of the Buyers Notice January 31,

2016. The parties disagreed a copy of the original Notice to End accompanied the Buyers Notice to the tenant. The landlord testified the document supports the Act and the purchaser's good faith intention to occupy unit.

The submitted evidence is also that the purchaser further provided the landlord a copy of the purchaser's own Tenant's Notice ending their tenancy at their current residence. The landlord testified that the document further supports the purchaser's good faith intention respecting the rental unit.

### **Analysis**

The parties may access referenced publications at [www.bc.ca/landlordtenant](http://www.bc.ca/landlordtenant) .

In this type of dispute the landlord bears the burden of proving they issued a valid Notice to End pursuant to the requirements of **Section 49** of the Act. On preponderance of all the relevant evidence I find as follows.

Relative to this matter is that the Act permits a landlord to end a tenancy pursuant to the provisions in **Section 49(5)** of the Act. The relevant section states as follows,

#### **Landlord's notice: landlord's use of property**

**49 (5)** A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I find the parties do not dispute the landlord's good faith intention to sell the rental unit; and, it is further undisputed the conditions on which the sale depends have been satisfied.

I find the purchaser requested of the landlord in writing to give the tenant notice to end the tenancy. I find the landlord originally relied on an incomplete written request from the purchaser, and I agree with the tenant the purchaser's written request dated January 09, 2016 was insufficient for the landlord to act on it and giving a Notice to End when they did. However, I find that the landlord sought clarification and 5 days after giving their Notice to End the landlord obtained a more complete written purchaser's request to end the tenancy conforming to Section 49(5) of the Act. I find that on January 31, 2016 the landlord provided the tenant with a copy of the *Real Estate Board's* Buyers Notice dated January 29, 2016. I find this dispute may have been avoided had the landlord not given their Notice to End pre-maturely, although I am mindful the tenant also had other concerns related to the original Notice to End.

I find the landlord's obligation is limited to receiving the purchaser's written request and cannot guarantee any intentions of the purchaser. Upon receipt of the requirements pursuant to Section 49(5) the landlord is tasked with ensuring they provide the tenant with a Notice to End in the proper form and content pursuant to **Section 52**, and within the timelines pursuant to **Section 49(2)** – to provide the Notice to End at least 2 months before the legally effective date of the Notice to End. I am satisfied that upon the landlord obtaining the Buyers Notice January 29, 2016 the landlord supported all the relevant requirements of Section 49 to legally end the tenancy on or after March 31, 2016.

I find the landlord's receipt of the Buyers Notice soon after issuing the Notice to End did not fatally affect the landlord's Notice to End or the landlord's obligations in respect to Section 49. As a result of all the above, I find the landlord ultimately did what they were

required to do so as to perfect their Notice to End pursuant to all of Section 49(5) within the requirements of Section 49(2).

I find the landlord provided sufficient evidence to address the tenant's concern and to address the purchaser's 'good faith' intention respecting the rental unit. I accept the landlord's document evidence of the purchaser's signed Buyers Notice, and their respective Tenant's Notice to end as sufficient evidence the purchaser intends to occupy the rental unit.

Therefore, as a result of all the above, finding the landlord's 2 Month Notice to End in compliance with Section 52 of the Act I find the landlord's Notice to End dated January 18, 2016 is valid. The landlord's Notice to End is upheld and the tenant's application is thereby dismissed.

In this type of application **Section 55(1)** of the Act states that if I dismiss the tenant's application or uphold the landlord's Notice to End I must grant the landlord an Order of Possession for the date pursuant to **Section 53(3)(b)**: that being **April 01, 2016**.

The parties acknowledged compensation requirements pursuant to **Section 51(1)**. It must be noted the tenant may have recourse under the provisions of **Section 51(2)** against the purchaser if they do not accomplish the stated purpose of their written request to the landlord, by way of an application for Dispute Resolution.

Upholding the landlord's Notice to End, I find that the tenant may not have disputed the landlord's Notice if the landlord had originally been more mindful of their part. Therefore, I allow the tenant recovery of their filing fee.

### **Conclusion**

The tenant's application to cancel the landlord's Notice to End is **dismissed**.

**I Order** the landlord must compensate the tenant for the cost of their application, for which the tenant is given a **Monetary Order** in the amount of **\$100.00**.

**I grant** an **Order of Possession** to the landlord effective **April 01, 2016**. The tenant must be served with this Order of Possession. If necessary, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: March 14, 2016

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Residential Tenancy Branch