



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0862966 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

CNL OLC O

### **Introduction**

This hearing was convened in response to an application by the tenant for dispute resolution. The tenant filed their application on June 07, 2016 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows;

1. To cancel the landlord's 2 Month Notice to End – Section 49
2. An Order for the landlord to comply with the Act – Section 62
3. Other – *not specified*

Both parties attended the hearing. Each acknowledged receiving all the evidence of the other. The parties were given opportunity to resolve or otherwise settle their dispute, present relevant evidence, and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence 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 tenancy began March 01, 2013 as a written agreement. The rent each month is \$1835.00 payable in advance on the first of the month / the rental period.

The relevant evidence in dispute is as follows. The landlord personally gave the tenants a 2 Month Notice to End tenancy for Landlord's Use of Property (the Notice) on May 31, 2016. The stated effective date of the Notice is July 31, 2016. The tenant claims that in

the early evening of May 31, 2016 they were given the Notice, however only receiving page 1 of the 2 page Notice document. The landlord asserts they provided the tenant with both pages of the Notice document on May 31, 2016, with the reason on page 2 of the document indicating the Notice was being given pursuant to Section 49(4) of the Act. The parties agree the tenant was subsequently provided with page 1 and 2 of the Notice by the landlord on June 02, 2016 by e-mail attachment following the tenant's assertion to the landlord by e-mail they had not been given page 2 of the Notice.

The landlord provided document evidence they are the sole shareholder of the landlord corporate entity in this matter.

At the outset of the hearing the tenant confirmed in testimony they do not dispute the landlord's good faith intention to occupy the rental unit pursuant to Section 49(4) of the Act. The tenant testified they agree the landlord intends to occupy the unit for themselves and their family. And, that their dispute is solely with the validity of what they claim is the landlord's incomplete Notice to End.

The tenant provided into evidence a signed witness statement by their wife and co-tenant MLM, in which it states the landlord, EC, accompanied by a female friend, AS, visited the rental unit on May 31, 2016. In relevant part it states;

***MLM:** (Ms C) then proceeded to hand me an envelope which she said contained a notice to end tenancy. I asked her if she had obtained an offer from the recent open house conducted over the weekend: May 28 and 29, 2016 to which she responded that she and her family would be moving into the unit. I received the envelope but did not open it at that time. (Ms C) and friend then said their good byes and left the unit.*

*After (Ms C's) departure I proceeded to open the envelope and saw that it contained a single page with printed material on one side only. I saw that it was titled: "2 Month Notice to End Tenancy for Landlord's Use of Property". I noted that it was dated 31 May 2016 and that the effective date of the move out was 31 July 2016. – as written.*

The landlord, provided into evidence 2 signed and notarized witness statements for themselves, and their witness in attendance, AS. In relevant parts, they state;

***EC:** (Ms S) and I completed the 2-page Notice to end Tenancy. (Ms S) put the two-page notice in an envelope and sealed it, for delivery to the tenants. – as written*

as well,

*We had a little chat and then I advised I was there to deliver the two month Notice to End Tenancy. (Ms M) asked me if the unit had sold and I said “no, there was an offer, but the money wasn’t there, so we are moving in while our house is being rebuilt.” This was explained twice to make sure there was no misunderstanding - as written*

**AS:** *I assisted and witnessed the completion of the 2 –page Notice to End Tenancy. I put the two-page notice in an envelope and sealed it, for delivery to the tenants. – as written*

as well,

*We entered the unit and had a pleasant, professional conversation with the tenants where (Ms C) advised that they were being given the two month Notice to end Tenancy and why. (Ms M) asked (Ms C) if the unit had sold and (Ms C) said no, there was an offer, but the money wasn’t there, so we are moving in while our house is being rebuilt. This was explained twice to make sure there was no misunderstanding. – as written*

The tenant testified and provided that on June 02, 2016 they sent the landlord an e-mail solely stating: “You did not give me page 2 of the “2 Month Notice to End Tenancy for Landlord’s Use of Property”- as written. The landlord in turn responded via e-mail for the tenant to find attached another copy of the 2 Month Notice to End Tenancy for Landlord’s Use of Property, further stating, “As discussed, my family is moving into the suite while our house is being built”.- as written The tenant testified the e-mail attachment contained 2 pages: a page 1, as already received, and a page 2 containing a check mark beside the reason afforded by Section 49(4) of the Act:

**49(4)** A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

The tenant testified they thought the landlord’s e-mail response seemed evasive as they could have stated their e-mail differently. Both parties testified to their opinion of the reason for the controversial page 2. The tenant argued it could have fallen out of the envelope before they received it. The landlord argued the tenant could have lost it in their abundance of belongings.

The tenant was asked why they waited over 1 ½ days to inform the landlord they had not given page 2 of the Notice. The tenant responded that they took time to inform

themselves about the Notice. The tenant submitted that as they did not receive both pages of the Notice at the same time the Notice is not valid; and a complete Notice document should be re-issued with an effective date pursuant to the re-issued Notice date. Or, in the least that the Notice should be considered complete June 02, 2016, amending, or extending the effective date of the Notice to August 31, 2016.

The landlord testified they had initially attempted to sell the rental unit, however terminated the listing agreement in favour with the stated plan to personally occupy the unit while their current home is demolished and rebuilt. The landlord argued they did as was required of them in accordance with the Act, and the stated effective date of July 31, 2016 should stand.

### **Analysis**

In this matter the onus is on the landlord to prove they issued a valid Notice to End. On preponderance of all the relevant evidence submitted, and on balance of probabilities, I find as follows.

I find the landlord has provided proof they are qualified to give a Notice and occupy the rental unit pursuant to Section 49(4) of the Act.

I am satisfied that upon the tenant receiving the landlord's e-mail attachment 2 days later the tenant was in possession of all information on page 2 of the Notice, if the tenant had not already informed themselves of it before e-mailing the landlord on the same date. I find that it does not make sense the tenant waited over 1½ days to inform the landlord they were not given page 2 of the Notice if they were truly unaware of the reason for the landlord's want to end the tenancy. I find the evidence submissions of both parties are in agreement the tenant was told by the landlord on May 31, 2016 that the landlord and her family would be moving into the unit. As a result, I accept this evidence of both parties as an agreed fact. I find that **Section 68** of the Act states:

#### **Director's orders: notice to end tenancy**

**68** (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I find the evidence of the tenant and of the landlord is that on May 31, 2016 the tenant was told by the landlord the landlord and their family were moving into the unit.

I am satisfied that if indeed the Notice to End lacked page 2, indicating the reason for its issuance and other information, both pages 1 and 2 were provided 2 days later. The tenant then filed their dispute June 07, 2016. I find the tenant was not denied information providing them opportunity to contest the Notice within the required time to do so or other information as to due process in respect to the Notice.

Moreover, I find the evidence is that the tenants were informed on May 31, 2016 of the landlord's reason for wanting to end the tenancy. I am satisfied by the evidence the tenants knew or should have known the information omitted from the Notice received on the same date. As a result, I find, pursuant to **Section 68** of the Act, it is reasonable to amend the Notice, as valid in compliance with Section 52 of the Act.

As the result of all of the above, the landlord's Notice to End dated May 31, 2016 with the effective date of July 31, 2016 as amended is upheld. The tenant's application to cancel the Notice effectively is dismissed. The landlord is entitled to an Order of Possession for the effective date of the Notice and the tenancy will end in accordance with the Order.

### **Conclusion**

The tenant's application is **dismissed**.

**I grant** an Order of Possession to the landlord **effective July 31, 2016**. The tenant **must** be served with this Order of Possession. 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 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: July 18, 2016

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Residential Tenancy Branch

