



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the 2 month Notice to End Tenancy dated June 3, 2016

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was personally served on the Tenants on June 3, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenants was personally served on the landlord on June 16, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the 2 month Notice to End Tenancy dated June 3, 2016?

### Background and Evidence

The tenancy began on July 15, 2014. The tenancy agreement is oral. The present rent is \$717.50 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$350 at the start of the tenancy.

The landlord seeks to end the tenancy on the basis of the following evidence.

- They intent to renovate the kitchen and bathroom.
- The work does not require a permit

- The work has been planned for a period of time.
- The landlord needs to replace the countertops, the drywall behind and the kitchen cabinets.
- The fridge is leaking and it has damaged the floor. The floor will have to be replaced at least in the kitchen area.
- The bathroom tiles are broken and the bathroom will have to be renovated to deal with this problem.
- The renovation work is expected to take up to 6 weeks and vacant possession is necessary.
- The landlord also testified they will need to have a furnace contractor to inspect the furnace as the tenants are manually turning the air conditioner off without their permission.

The tenant gave the following evidence:

- The landlord has left the air conditioner on full blast in a situation which has made the tenants uncomfortably cold.
- They have been looking for rental accommodation but have not been able to find any.

Analysis:

The Notice to End Tenancy relies on the following ground:

- The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant

After carefully considering all of the evidence I determined the landlord has established sufficient grounds to end the tenancy. I accept the testimony of the landlord's agent that they have a good faith intention to make the renovations of the kitchen and bathroom, the work does not require permits and that vacant possession is necessary as it will take 5 to 6 weeks to complete. The tenants did not dispute the landlords testimony that they wanted to renovate the rental unit.

However, the Notice to End Tenancy has failed to give a complete months notice when it set the end of tenancy for August 3, 2016. The Residential Tenancy Act provides that where a landlord serves a 2 month notice it must be 2 clear months that is served before the end of the rental payment period to be effective at the end of the rental payment period for the second month. The Act self corrects a Notice that has an incorrect end of tenancy date. In this case the Act self corrects the end of tenancy date for August 31, 2016

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the 2 month Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice as corrected by the Act. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective August 31, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

As a courtesy to the parties I draw their attention to section 51 of the Residential Tenancy Act which provides as follows:

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

**51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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:

I dismissed the tenants application to cancel the 2 month Notice to End Tenancy. I granted an Order for Possession effective August 31, 2016.

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 21, 2016

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Residential Tenancy Branch