



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF, OLC

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated June 10, 2016 and setting the end of tenancy for August 31, 2016.
- b. An order to recover the cost of the filing fee.

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 Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by posting on June 20, 2016. With respect to each of the applicant's claims I find as follows:

### Preliminary Issue:

NG was identified as a landlord in the Application for Dispute Resolution. He is not named as a landlord in the tenancy agreement and is not a registered owner. I dismissed the claim against NG as the tenant failed to prove he is a landlord.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated June 10, 2016 and setting the end of tenancy for August 31, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

At the end of November 2014 the parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on February 1, 2015 and end on January 31, 2016. The rent was \$2500 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1250. At the end of December 2015 the parties entered into a tenancy agreement that provided that the tenancy would start of February 1, 2015 and continue for 1 Year ending on January 31, 2016 and become month to month after that. The tenant submits there was an error in recording the term of the second agreement.

On June 10, the landlord served a 2 month Notice to End Tenancy that set the end of tenancy for August 31, 2016 based on the following grounds:

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The tenant submits that landlord does not have a right to serve a 2 month Notice to End Tenancy on the stating the parties are in the middle of a fixed term tenancy. She further testified that changes were made to the landlord's form of agreement indicating it was a fixed term for another 12 months. She further submits that the landlord does not have a good faith intention to move in as the landlord told her she intends to sell the rental unit.

The landlord disputes this. She testified the parties intended the previous fixed term tenancy would continue on a month to month basis. She testified the form of agreement that she has is identical to that provided by the tenant. Further, the arbitrator does not have the jurisdiction to change any written documents as that is an equitable power reserved for the superior court only. Finally, she has a good faith intention to move in and does not intend to sell the rental unit.

Settlement:

At the end of the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 62(3) of the Residential Tenancy Act as follows:

- a. The parties mutually agree to end the tenancy on October 31, 2016.
- b. The parties request the arbitrator is issue an Order for Possession for October 31, 2016.
- c. The tenant is entitled to the equivalent of one month rent free under section 51(1) of the Act and the tenant shall be entitled to apply that to the last month she is residing in the rental unit.
- d. The parties agree that should the tenant find alternative accommodation and leave the rental property earlier than the agreed end of tenancy date the landlord shall not claim for any loss of rent caused by the failure to give sufficient notice.
- e. The security deposit shall be dealt with in accordance with the provisions of the Residential Tenancy Act.
- f. Except as provided in this agreement the tenant releases and discharges the landlord from any claims she has under section 51(1) or any fixed term tenancy.
- g. The Tenant retains her right under section 51(2) of the Act claim against the landlord if the landlord fails to comply with that section.

Section 51(2) provides as follows:

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

**51 (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.

Order for Possession:

As a result of the settlement I issued an Order for Possession effective October 31, 2016. 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 October 31, 2016. All other claims made in the Application for Dispute Resolution are dismissed.

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.

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: August 02, 2016

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Residential Tenancy Branch