



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNL, CNQ, FF, LRE, MNDC, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence provided by the other party. As both parties have attended and have confirmed receipt of the notice of hearing package by the other party, I am satisfied that both parties have been properly served as per sections 88 and 89 of Act. Neither party raised any issues regarding service. As such, I find that both parties are deemed served as per section 90 of the Act.

### Preliminary Issue(s)

The tenant applied for more time to be allowed to make an application for dispute resolution to dispute the landlord's notice to end tenancy issued for landlord's use. The tenant stated that she received the 2 Month Notice dated May 1, 2016 on May 9, 2016. The landlord disputed this stating that it was served on May 1, 2016 and provided testimony confirming this that the son, V.H. signed in receipt of the notice of May 1, 2016 as shown on the landlord's copy of the 2 Month Notice. In any event the tenant has failed to provide any relevant evidence regarding why she was unable to apply for dispute within the allowed timeframe. The tenants' application for more time is dismissed.

The landlord made a request during the hearing for an order of possession for the 2 Month Notice.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenants have applied for a monetary order for money owed or compensation for damage or loss, for an order for the landlord to comply with the Act, for an order to suspend or set conditions on the landlord's right to enter the rental unit. As these sections of the tenants' application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss these sections of the tenants' claim with leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for landlords' use?

Are the tenants' entitled to an order to cancel the 10 Day Notice?

Are the tenants' entitled to recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that this tenancy began on September 1, 2014 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated

August 14, 2014. The monthly rent is \$1,400.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$750.00 was paid on August 14, 2014.

Both parties confirmed that the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use dated May 1, 2016 which sets out an effective end of tenancy date of June 30, 2016 and the reason it was being given as:

*All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The tenant provided affirmed testimony that the landlord was not acting in good faith as the landlord had told her that he intended to re-rent the unit. The landlord clarified that a sale for purchase of the house "fell through" and "did not happen". The landlord stated that no sale transaction was completed, nor was any request in writing received from the potential purchaser for "vacant possession" of the rental premises.

Both parties confirmed that the landlord served to the tenants a 10 Day Notice dated June 21, 2016 on the same date. The 10 Day Notice sets out an effective end of tenancy date of June 30, 2016 and that the tenants failed to pay rent of \$1,400.00 that was due on June 1, 2016. The tenant provided undisputed affirmed testimony that she "did not pay rent". The tenant stated that the landlord was originally provided with post-dated cheques which she ordered "stop payment" of. The tenant confirmed that she was unwilling to pay the rent until the landlord returned the post-dated cheques.

### Analysis

Subsection 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

I accept the undisputed affirmed evidence of both parties and find that the tenant has established that the landlord has failed to act in good faith regarding the 2 Month Notice. The landlord confirmed that no sale was made nor was there a written request by the purchaser for "vacant possession". As such, this portion of the tenant's application is granted. The landlord's 2 Month Notice dated May 1, 2016 is cancelled and is of no effect.

I accept the undisputed affirmed evidence of both parties and find that the landlord properly serve the tenants with the 10 Day Notice dated June 21, 2016. Both parties confirmed that rent was due on the 1<sup>st</sup> day of each month. Both parties confirmed that the tenants failed to pay rent of \$1,400.00 that was due on June 1, 2016. Both parties confirmed that the tenant ordered the "stopped payment" of the post-dated cheques given to the landlord.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenants failed to pay rent for June 2016. The tenants admitted that she did not pay June's rent.

As the tenants have failed to pay her rent in full when due, I find that the 10 Day Notice issued June 21 2016 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on July 1, 2016 as the effective date of the 10 Day Notice of June 30, 2016 is not 10 Days. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

I decline to grant the tenants' request for recovery of the filing fee as they have been substantially unsuccessful.

Conclusion

The landlord is granted an order of possession.

The order of possession must be served upon the tenants. Should the tenants 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 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