



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1170 DAVIE HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

CNL FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on July 26, 2016 (the "Application").

The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated July 22, 2016 (the "2 Month Notice"); and an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf, and was assisted by his advocate, C.L. The Landlord was represented at the hearing by E.F. and J.B. All parties giving evidence provided their solemn affirmation.

The Tenant advised his hearing package was served on the Landlord by registered mail. The Landlord confirmed receipt of the hearing package and the Tenant's documentary evidence.

However, the Tenant stated he did not receive the Landlord's evidence package, which the Landlord testified was sent to the Tenant by regular mail. The Landlord's evidence package consists of four pages. One page included the Landlord's written submissions, one page was a letter from the previous landlord to the Landlord regarding the Tenant's suite, and two pages were a copy of the 2 Month Notice. Having reviewed the Landlord's evidence and having determined I do not need to rely on it to reach a decision, I find there is no prejudice to the Tenant in proceeding.

The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Background and Evidence

The Tenant submitted with his documentary evidence a copy of the tenancy agreement between the parties. The parties agreed the tenancy commenced on November 1, 2011, on a month-to-month basis. Rent in the amount of \$250.00 per month is payable on the first day of each month. The Tenant also paid a security deposit in the amount of \$125.00 at the beginning of the tenancy.

On behalf of the Landlord, E.F. advised the 2 Month Notice was issued for two reasons. First, she confirmed the Tenant ceased to be an employee of the Landlord on June 9, 2016. The Tenant was asked if this was the case and he agreed. According to the E.F., the Tenant's employment with the Landlord was the basis for the below-market rent.

Second, E.F. stated the Landlord wishes to provide the new building manager, J.B., with a 1-bedroom unit in the building. At this time, there are no other 1-bedroom rental units available, nor has the Landlord received notice from any existing tenants of 1-bedroom units. J.B. is temporarily occupying a 2-bedroom unit.

C.L. made submissions on behalf of the Tenant in support of cancelling the 2 Month Notice. First, she stated that correspondence from the Landlord and J.B. indicates J.B. already lives in a 2-bedroom unit. Therefore, she submitted, it is not necessary for the Tenant to vacate.

Second, C.L. raised questions about a notice to end tenancy issued by the previous landlord in March 2016. The previous notice to end tenancy was disputed by the Tenant, and others, including C.L. At a dispute resolution hearing on May 24, 2016, the Landlord withdrew the notice to end tenancy. The file numbers for the previous proceedings are included on the cover page for reference.

Third, C.L. suggested another unit is or will eventually be available in the building, although there was no indication of how long that may take.

Finally, C.L. indicated the Tenant feels harassed by the Landlord.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(6) of the *Act* states:

“A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

...

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property”.

Although not specifically raised by the Tenant, the requirement of “good faith” is elaborated upon in Residential Tenancy Branch Policy Guideline 2. It states:

“Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.”

The Landlord’s evidence, which I accept, is that the 2 Month Notice was issued because the Landlord wishes to make the Tenant’s rental unit available to J.B., the new building manager. I find there is insufficient evidence before me that the Landlord intends to do anything with the rental unit other than what was indicated on the 2 Month Notice.

In light of the above, I find the Tenant’s Application must be dismissed.

When a tenant’s application to cancel a notice to end tenancy has been dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord. Accordingly, I grant the Landlord an order of possession which will be effective September 30, 2016, at 1:00 p.m., which is the stated effective date of the 2 Month Notice.

As the Tenant has not been successful, I decline to award recovery of the filing fee.

Conclusion

The Tenant's Application is dismissed.

By operation of section 55 of the *Act*, I grant the Landlord and order of possession, which will be effective September 30, 2016, at 1:00 p.m. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: September 14, 2016

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Residential Tenancy Branch