



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, MNDC, OLC, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution, submitted to the Residential Tenancy Branch on July 18, 2016, seeking to cancel a notice to end tenancy for unpaid rent and a monetary order in the amount of \$500.00.

The hearing was conducted via teleconference and was attended by both tenants and both landlords.

Residential Tenancy Branch Rule of Procedure 4 stipulates how an applicant may amend their Application for Dispute Resolution.

I note that on August 23, 2016 the tenants submitted an Amendment to an Application for Dispute Resolution in which they indicated that they received a 2 Month Notice to End Tenancy for Landlord's Use of Property on July 25, 2016 and that they would like to add a related claim.

In the section where they are to provide details of the change they simply wrote "Digital Evidence Detail (DVD Attached). I also note that on the same date the tenants submitted a Monetary Order Worksheet indicating they were seeking compensation in the amount of \$3,015.00.

I will accept the tenants' amendment to dispute the 2 Month Notice to End Tenancy for Landlord's Use of Property. However, as the tenants did not mention in the Amendment to an Application for Dispute Resolution form that they were seeking additional monies, I find the tenants have failed to amend their monetary claim in accordance with Rule of Procedure 4 and I decline to accept the amendment. The tenants remain at liberty to file a separate Application for Dispute Resolution for any additional compensation.

In their written submissions the landlords indicated they were withdrawing the 10 Day Notice to End Tenancy for Unpaid Rent issued on July 16, 2016 as all rent for July 2016 was paid in full. The parties confirmed this at the hearing. As such, I amend the tenants' Application to exclude cancelling the 10 Day Notice.

I note, also, that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided, pursuant to Sections 49, 51, 67, and 72 of the *Act*, are:

1. Whether the respondent landlords have authority under the *Residential Tenancy Act* (*Act*) to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property or should it be the purchaser of the rental unit;
2. Whether the tenants are entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property;
3. If the tenancy is to end, what is the correct effective vacancy date;
4. Whether the tenants are entitled to a monetary order for compensation for receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property; and
5. If the tenants are entitled to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution.

Should the tenants be unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property it must also be decided if the landlords are entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The parties submitted the following relevant documents as evidence:

- A copy of a tenancy agreement signed by the parties on October 6, 2000 for a month to month tenancy beginning on October 15, 2000 for a monthly rent of \$440.00 due on the 1<sup>st</sup> of each month with a security deposit of \$220.00 paid; and
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on July 25, 2016 with an effective vacancy date of September 26, 2016 citing the rental unit will be occupied by the landlord or a close family member. The 2<sup>nd</sup> page of the Notice stipulates that the tenants had 15 days after receiving the Notice to file an Application for Dispute Resolution to dispute the Notice.

The tenants submitted, in their Amendment to an Application for Dispute Resolution, and confirmed in their testimony that they received the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property on July 25, 2016.

The tenants acknowledged submitting their Amendment to an Application for Dispute Resolution seeking to include disputing the 2 Month Notice on August 23, 2016. The tenants stated that they were trying to get all of the information they needed together before submitting the amendment.

The tenants submitted that the respondent landlords were not allowed to issue a notice to end the tenancy on behalf of the purchaser. The tenants stated that if the purchaser wanted to end the tenancy it would be up to them to issue a notice to do so. The tenants also submitted that they had not seen anything in writing that the purchaser had requested the rental unit be vacated.

The landlord testified that he was informed by his real estate agent that the purchaser's real estate agent had requested the rental unit be vacated at the closing of the sale of the property. The landlord confirmed they had received nothing in writing.

The tenants also submit the Notice should be considered invalid because the landlord put the wrong effective date. The tenants stated that their rental is on a month to month basis and the landlord cannot make the effective date earlier than the end of the month of September, 2016.

The tenants also seek a monetary order for compensation for receiving a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenants submitted that they had paid rent for the month of September. They explained payments are transferred automatically from their account to the landlord when rent is due. The landlords were unaware that the tenants payment had gone through as they have not checked their accounts at the time of the hearing.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if, among other reasons the landlord or a close family member of the landlord intends in good faith to occupy the rental unit or the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit. A landlord is defined under Section 1 of the *Act* as, among other things, as the owner of the rental unit.

As the respondent landlords currently own the rental unit, I find the respondent landlords are the landlords in this tenancy. As a result, I find the landlords have authority under Section 49 of the *Act* to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property.

Section 49(8) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(9) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

As per the tenant's testimony I accept the tenants received the 2 Month Notice on July 25, 2016 and as such, I find the tenants had until August 10, 2016 to submit an Application for Dispute Resolution or an Amendment to an Application for Dispute Resolution seeking to cancel the 2 Month Notice.

As per the tenants testimony I accept that the tenants submitted their Amendment to An Application for Dispute Resolution seeking to cancel the 2 Month Notice on August 23, 2016 or 28 days after receiving the 2 Month Notice.

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

While the tenants did not specifically seek additional time to submit their Application, I have considered, based on their testimony, if there were any exceptional circumstances that prevented them from filing their Amendment form within the 15 day deadline. I find the tenants'

submission that they were gathering evidence does not represent any exceptional circumstances and as such, I decline to allow the tenants more time to dispute the Notice.

As a result, I find the tenants are conclusively presumed to have accepted the tenancy will end on the effective date of the Notice. Therefore, I dismiss this portion of the tenants' Application and find the 2 Month Notice to End Tenancy for Landlord's Use of Property to be enforceable.

As I have found the tenancy will end because of the tenant's failure to file their Amendment within the required timeframe, I make no findings of fact or law in relation to the specific reason to end the tenancy.

Section 49(2) states a landlord may end a tenancy under Section 49 by giving notice to end the tenancy effective on a date that must be not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement.

In the case before me the landlord's issued the 2 Month Notice on July 25, 2016 with an effective date of September 26, 2016 and the rent is due, according to the tenancy agreement, on the 1<sup>st</sup> of each month. As a result, I find, in order to comply with Section 49(2) the earliest effective date of such a notice must be September 30, 2016.

Section 53 of the *Act* stipulates that if a landlord gives notice to end a tenancy effective on a date that does not comply with requirements of the relevant section of the *Act*, the effective date of the notice is deemed to be changed to the earliest date permitted under that section.

As such, I order, pursuant to Section 53, that the effective date of the 2 Month Notice issued on July 25, 2016 be amended from September 26, 2016 to September 30, 2016.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlords on July 25, 2016 complies with the requirements set out in Section 52 and as amended by my order above.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Section 51(1) states that a tenant who receives a notice to end a tenancy under Section 49 of the *Act* 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. The section goes on to say that a tenant may withhold the amount authorized from the last month's rent.

While the landlords could not confirm, during the hearing, that rent for September 2016 had been paid by the tenants and the *Act* allows for the landlord until the effective date of the 2 Month Notice to provide the compensation to the tenants, I find the tenant's Application for a

monetary order for this compensation is premature. I dismiss this portion of the tenants' Application.

In the event that the landlords fail to ensure the tenants have received the required compensation, pursuant to Section 51, by the effective date of the Notice I grant the tenants liberty to reapply for a monetary order.

### Conclusion

Based on all of the above, I find the landlords are entitled to an order of possession effective **September 30, 2016 after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

As the tenants were not successful in their Application for Dispute Resolution I dismiss their claim to recover the \$100.00 filing fee paid by the tenants for this application

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 09, 2016

---

Residential Tenancy Branch