



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

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

- 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; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence in person on August 10, 2016. The landlord through her translator confirmed receipt of the hearing package and the submitted documentary evidence. The landlord stated that no documentary evidence was submitted. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

Is the tenant entitled to a monetary order for 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 confirmed that the landlord served to the tenant a 2 Month Notice to End Tenancy issued for Landlord's Use dated July 21, 2016 in person on July 21, 2016. The

2 Month Notice sets out an effective end of tenancy date of September 30, 2016 and provides for one reason as,

*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parents or child of that individual's spouse)*

The tenant disputes that the landlords will in good faith occupy the rental unit. The tenant provided direct testimony stating that she had met with the landlords and was told through a translator (sister-in-law) that the landlords' cousin would be occupying the rental property and as such does not believe that the landlords will move-in themselves. The tenant stated that the landlords informed her that they were losing money on the rent and that she believes the landlords just want to re-rent the unit at a higher rental rate.

The landlord disputed this claim stating that there was a misunderstanding due to the poor English of the landlords' sister-in-law and that it has always been their intent to occupy the premises themselves. The landlord stated that it is still the intention of the landlords to move-in and occupy the rental unit themselves. The landlord stated that they are currently a family living in a basement unit and that the house is intended for their own use.

### Analysis

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

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

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...

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant has raised a belief that the landlords do not intend to occupy the rental premises in good faith. The landlord has disputed this stating that there was a misunderstanding due to the landlord's poor English skills and that it is the intention of the landlords to move-in themselves. The tenant has in fact commented during the hearing about the landlords' poor English skills stating that it was difficult to understand them. I found during the hearing that even with the assistance of the landlord's translator that this was in fact difficult.

I find on a balance of probabilities based upon the direct testimony of both parties that I prefer the evidence of the landlord over that of that tenant. The landlord has provided direct testimony stating that there was a miscommunication and that it is the intent of the landlords' to follow through on the intent of the 2 Month Notice. As such, the 2 Month Notice dated July 21, 2016 is upheld. The tenant's application is dismissed.

As the effective end of tenancy date has passed, the landlord is granted an order of possession to be effective within 2 days of service.

### Conclusion

The tenant's application is dismissed.

The landlords are granted an order of possession.

The tenant must be served with the order of possession. Should the tenant 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: September 29, 2016

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Residential Tenancy Branch

