



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes CNL

### Introduction

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

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;

The hearing was conducted by conference call. All named parties attended the hearing.

### Issues

*Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?*

### Background & Evidence

The rental unit is on the second floor of a two-story commercial residential building which contains 4 commercial units and 5 residential units. The tenancy began approximately 25 years ago and the current monthly rent is \$871.00.

The landlord served the tenant with a 2 Month Notice on August 3, 2016. The Notice has an effective date of February 3, 2017. The landlord submits that the rental unit will be occupied by his son and nephew.

The tenant is disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenant testified that in a previous conversation with the landlord, the landlord had made reference to both his children attending university in Ontario. The tenant submits that a vacancy came up recently in another unit and the landlord re-rented that unit effective November 1, 2016. He questions why the landlord could not have utilized that vacancy versus evicting a tenant of over 25 years. The tenant submits that the landlord is only trying to end his tenancy as he has been a long term tenant with a rental rate that is well below market value. The tenant submitted rental rate comparisons of the other four residential units in the building.

The landlord testified that his 26 year old son just returned from school in Calgary and needs his own place to live in. His son will be sharing the rental unit with his nephew who just recently got a new job in downtown Vancouver. In response to the tenant's submission that the landlord's children were in Ontario, the landlord testified that he was referring to his other son who is still attending school in Ontario. The landlord submits that they provided six months' notice as the tenant has been a long term tenant and the landlord is aware of the tight rental market. The landlord submits that the rent for the unit is low by choice in order to avoid high turnover. The landlord submits that the other vacancy was filled immediately by a friend of the vacating tenant and the timing of that vacancy did not work for the landlord to take over that unit.

### Analysis

*Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?*

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

Further, 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2 "Good Faith Requirement when Ending a Tenancy"* provides the following guidance:

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 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.

I find that the evidence supports that the landlord intends in good faith to have his son and nephew move into the rental unit. There is not any supporting evidence of any ulterior motive other than the tenant's assertion that the landlord simply wants to re-rent the unit at higher rates. There is no evidence that the landlord attempted to illegally increase the rent for this rental unit in the past or that the landlord intends to re-rent the unit. I accept the landlord's testimony that rent was kept low to avoid high turnover. If the landlord wanted increased rent he could have implemented yearly rent increases allowed under the Act or even made an application for a rent increase greater than the amount permitted. The tenant himself submits

the rent is well below market value which is a provision that would warrant an application for an additional rent increase under section 23 of the *Residential Tenancy Regulation*.

Further, I accept the landlord's testimony that the timing of the vacancy for the other rental unit was not appropriate for the landlord to take over that unit. That vacancy came up in November of 2016 and was filled immediately whereas the landlord did not require a unit for their own use until February 2017.

I find that the landlord has provided sufficient evidence to justify that it had a good faith intention to issue the 2 Month Notice. The tenant's application to cancel the 2 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

If the landlord does not take the steps to utilize the rental unit for the reasons stated within a reasonable period after the effective date of the Notice, or the rental unit is not used for the stated purpose for at least six months, the tenant may make an application for compensation of an amount equivalent of double the monthly rent.

#### Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on February 3, 2017**. Should the tenant(s) fail to comply with this Order, this Order may be filed 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: October 12, 2016

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Residential Tenancy Branch