



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

For the landlord: OPL FF  
For the tenant: CNL FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for landlord’s use of property and to recover the cost of the filing fee. The tenant applied to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated August 19, 2016 (the “2 Month Notice”) and to recover the cost of the filing fee.

The tenant and the landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me.

The tenant confirmed that she received the October 3, 2016 letter from the landlord in evidence and the landlord confirmed receiving the tenant’s documentary evidence and that he had the opportunity to review that evidence.

### Issues to be Decided

- Should the 2 Month Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2015. Monthly rent in the amount of \$1,085.00 is due on the first day of each month. A security deposit of \$542.50 was paid by the tenant at the start of the tenancy.

The tenant confirmed being served with the 2 Month Notice dated August 19, 2016 on August 19, 2016. The effective vacancy date on the 2 Month Notice is listed as October 31, 2016. The tenant disputed the 2 Month Notice on September 2, 2016 which was within the allowable time limitation under the *Act*, which is 15 days. Page two of the 2 Month Notice indicates the reason as "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The landlord referred to the October 3, 2016 letter he wrote to the tenant explaining why he was moving back into the rental unit which included some of the following reasons:

- He needs a change due to depression,
- He is nearly 80 years old and although his health is poor he knows he can cope with the move and at his own leisure fix up the property,
- Although he was originally going to sell the property a realtor who went through the house advised that it would be a mistake to sell it in the present condition,
- He knows he can do the work in the house, which he can do at his own pace and lie down whenever he needs to,
- The house is across the street from the hospital which is reassuring,
- He will have higher revenue by relocating.

The tenant claimed the 2 Month Notice was issued in bad faith as a realtor had been by to appraise the home and that he could move into the home next door instead if he was going to move.

The landlord stated that the other home does not need the amount of work that the tenant's home requires, which is another reason why he needs to occupy the rental unit.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**2 Month Notice to End Tenancy for Landlord's Use of Property** – The tenant disputed the 2 Month Notice by alleging that the 2 Month Notice was issued in bad faith. The reason indicated on the 2 Month Notice is “The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.”

Based on the above and on the balance of probabilities, I find that the landlord has met the burden of proof and I find the 2 Month Notice issued by the landlord to be valid. I find the tenant has failed to present sufficient evidence of bad faith and I find the reasons provided by the landlord to be reasonable. Therefore, **I dismiss** the tenant's application to cancel the 2 Month Notice and I **uphold** the landlord's 2 Month Notice. Section 55 of the *Act* applies and states:

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

I have reviewed the 2 Month Notice and find that it complies with section 52 of the *Act*. Therefore, given the above, I find that the landlord is entitled to an order of possession effective **October 31, 2016 at 1:00 p.m.** which is the effective date listed on the 2 Month Notice. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that court.

As the landlord's application had merit, I grant the landlord the recovery of the filing fee of **\$100.00**. Pursuant to section 72 of the *Act*, **I authorize** the landlord to retain \$100.00

from the tenant's security deposit of \$542.50 in full satisfaction of the recovery of the cost of the filing fee. I find that the tenant's security deposit balance is now \$442.50.

### Conclusion

The tenant's application is dismissed

The landlord's application is successful. The landlord's 2 Month Notice is upheld. The landlord has been granted an order of possession effective October 31, 2016 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted the recovery of the filing fee of \$100.00. The landlord has been authorized to retain \$100.00 from the tenant's security deposit of \$542.50 in full satisfaction of the recovery of the cost of the filing fee. I find that the tenant's security deposit balance is now \$442.50.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 28, 2016

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Residential Tenancy Branch