



# 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* ("Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 1, 2016 ("2 Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant and her agent, GA (collectively "tenant") and the landlord and his English language translator, WA (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 50 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The landlord said that he did not receive a one-page letter, dated October 31, 2016, from the tenant, addressed to the Residential Tenancy Branch. The tenant said that she served the letter to the landlord. The letter was only regarding when the tenant received the 2 Month Notice from the landlord and the incorrect dates on the notice. I permitted the tenant to read her letter aloud to the landlord during the hearing.

The landlord said that he personally served the tenant with the 2 Month Notice sometime between October 10 and 15, 2016, but he could not recall the exact date. The tenant confirmed personal receipt of the 2 Month Notice on October 25, 2016. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on October 25, 2016. As the landlord was unsure about the service date, I accept the tenant's testimony.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant stated that her tenancy began on August 1, 2015 with the former landlord. The landlord said that he bought the rental unit in November 2015 and continued the tenancy with the tenant as of December 1, 2015. The landlord said that he did not sign a written tenancy agreement with the tenant, only a verbal agreement was reached to continue her tenancy. The tenant said that she signed a tenancy agreement with the former landlord indicating that the current landlord would be continuing her tenancy. The tenant did not provide a copy of any written tenancy agreements for this hearing, stating that she had not received any copies from the former or current landlord.

Both parties agreed that monthly rent in the amount of \$944.00 is payable on the first day of each month. The tenant continues to reside in the rental unit, which is a one-bedroom and one-bathroom suite in the basement of a house, while the landlord occupies the upper floor. The landlord said that the upper floor has three bedrooms, one of which is occupied by him and his wife, one occupied by his 16-year-old son and the other shared by his 6-year-old daughter and 17-year-old daughter.

The tenant did not provide a complete copy of both pages of the 2 Month Notice. She only provided page 1, not page 2. However, both parties agreed that the landlord identified the following reason for seeking an end to this tenancy on page 2 of the notice:

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

### Analysis

According to subsection 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. The tenant received the 2 Month Notice on October 25, 2016, and filed her Application on October 31, 2016. Therefore, the tenant is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 2 Month Notice.

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*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 that they do not have an ulterior motive for ending the tenancy.*

I accept the landlord's testimony that he requires the rental unit for his 17-year-old daughter ("older daughter") because she wants her own space for privacy, studying, and having friends over. The landlord said that she currently shares a room with her younger sister and that she has no privacy or ability to study for school. The landlord maintained that his older daughter has had arguments with him since June 2016 when she had friends over and no privacy in the home. He testified that he told his older daughter to finish her school year in June 2016 and then he would allow her to live in the basement suite once the tenant left. He explained that he informed the tenant verbally since then that he would need the rental unit for his older daughter.

I find that the tenant failed to show that the landlord did not issue the notice in good faith. The tenant claimed in her application, written evidence and verbal testimony during the hearing, that she was only disputing the 2 Month Notice because the date of

the notice and the effective move-out date were incorrect, since the landlord served the notice to her on October 25, 2016. The tenant initially stated that she was not disputing the landlord's good faith intent but when I advised her that the effective move-out date was automatically corrected under section 53 of the *Act* to December 31, 2016, she said that she wanted to stay in the rental unit and the landlord was not being genuine. The tenant initially explained that she did not have enough time to move if the effective date on the notice of November 1, 2016 was used, but that December 31, 2016 was enough time for her to move. The tenant then changed her testimony to state that she wanted to stay in the rental unit so the landlord was not acting in good faith. She said that the landlord initially told her verbally that he wanted his son to move in, not his older daughter. The landlord denied this, stating that there was a language barrier for him and the tenant both, and that he referred to one of his children moving in, not specifically his son.

Based on a balance of probabilities and for the above reasons, I find that the landlord's daughter intends in good faith to occupy the rental unit. I find that the landlord has met his onus of proof under section 49(3) of the *Act*.

The tenant said that the landlord also identified another reason on the 2 Month Notice: *"the landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use."* The landlord denied that he indicated this reason on the notice. The tenant did not provide a copy of page 2 of the 2 Month Notice indicating this reason, although she was required to submit a complete copy with her application. Therefore, I find that the landlord did not issue the 2 Month Notice for the above reason. I find that the landlord only issued the 2 Month Notice for the reason that the parties agreed: *"the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."*

I dismiss the tenant's application to cancel the 2 Month Notice. I uphold the landlord's 2 Month Notice, dated October 1, 2016. Pursuant to section 55 of the *Act*, I grant an order of possession to the landlord effective at 1:00 p.m. on December 31, 2016, the corrected effective date on the 2 Month Notice.

I find that the landlord's 2 Month Notice complies with section 52 of the *Act*. Although the tenant's mailing address was not provided nor was the landlord's name in the appropriate section of the notice on page 1, I find that this may be due to the language barrier faced by the landlord and he claimed he had his older daughter help him with the notice and could not recall what information was missed. I find that the landlord signed

and printed his name at the bottom of the notice and he dated the notice, even though he served it on a later date. The rental unit address is indicated at the bottom of the notice, where the tenant is asked to move out. The effective date is automatically corrected as per section 53 of the *Act*. I find that the tenant had appropriate notice of the landlord's intentions regarding the 2 Month Notice both before and after the notice was issued. The tenant disputed the notice in this application, so she was properly served with it.

As the tenant was unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an **Order of Possession to the landlord effective at 1:00 p.m. on December 31, 2016**. Should the tenant 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: December 15, 2016

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Residential Tenancy Branch