



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNL, OLC, ERP, RP, LAT, PSF, RR, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; an order to have the landlord complete repairs and emergency repairs; provide services and facilities; an order to change the locks and rent reduction.

The hearing was conducted via teleconference and was attended by the tenant; the male landlord and his legal counsel.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 2 Month Notice to End Tenancy for Landlord's Use of Property and the continuation of this tenancy is not sufficiently related to the tenant's claim for repairs; emergency repairs; provision of services and facilities required by law; authorization to change locks of the rental unit; or a rent reduction. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 2 Month Notice. I exercise my discretion to dismiss the tenant's claims for repairs; emergency repairs; provision of services and facilities required by law; authorization to change locks of the rental unit; or a rent reduction. I grant the tenant leave to re-apply for these other claims.

I note that Section 55 of the *Residential Tenancy Act (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 are whether the tenant is entitled to more time to cancel a notice to end tenancy and to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Sections 49 and 66 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

### Background and Evidence

The tenant submitted the following relevant documents into evidence:

- A copy of a tenancy agreement signed by the tenant and a previous landlord on November 9, 2011 for a month to month tenancy with rent due on the 1<sup>st</sup> of each month with a security deposit of \$337.50. The current rent is \$736.15;
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on November 22, 2016 with an effective vacancy date of January 31, 2017 citing the rental unit will be occupied by the landlord or the landlord's close family member.

The landlord testified that he had been searching for property for his family in a nearby city but for a number of reasons they had not been able to find anything suitable. So they decided to look in the area where this residential property is located and purchased this property. The landlord submitted that their intention is for their family to live in the property and for both he and his wife to use a portion of the home for their work.

Both parties acknowledged that there are currently 3 rental units on the residential property. The landlord stated that all 3 tenancies have been issued the same notice to end tenancy.

The landlord testified he attempted to serve the tenant personally with the Notice to End Tenancy on November 23, 2016 but he was not available so they sent it by registered mail to the street address of the property.

The tenant testified that he normally does not get any mail sent to his street address except for his pension cheque. He states that he has a postal box that he rents for his mail and that he had provided that address to the landlords (previous and current).

The tenant submitted that by accident he checked his street address mailbox and there was a registered mail card so he picked up the registered mail on December 5, 2016. In support of this the tenant has submitted tracking information from Canada Post to confirm the date he signed for the package.

The tenant submitted that he does not think the landlord is planning to move into the property. He stated that he doesn't see how the landlord is going to use the property for

a single family home after it has been set up as 3 distinct units. The tenant also submitted that he does not believe the landlord intends to move from the nearby city, as they have property there to live in.

He believes that the reason the landlord is ending the tenancy is in part because the landlord is trying to avoid making any of the repairs and emergency repairs the tenant has been requesting for some time including from two previous landlords of the property. The repairs include issues related to asbestos; a leaky roof; doors; kitchen cabinetry; the dryer enclosure; bathroom vanity; back splash and faucet; replacement toilet and other general issues.

### Analysis

From the tenant's testimony and documentary evidence, I am satisfied that the tenant received the 2 Month Notice to End Tenancy for Landlord's Use of Property on December 5, 2016. When a tenant receives such a Notice they have 15 days from the receipt of the Notice to file their Application for Dispute Resolution seeking to cancel the notice.

The Residential Tenancy Branch received the tenant's Application for Dispute Resolution on December 14, 2016. As such, I find the tenant filed his Application within the required time frame and there is no need to allow the tenant additional time to submit his Application.

Section 49 of the *Act* allows a landlord to end a tenancy, among other reasons, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(2) stipulates that the landlord may end the tenancy for such a purpose by giving a notice to end the tenancy effective on a date that must be (a) not earlier than 2 months after the date the tenant receives the notice; (b) the day before the day in the month, that rent is payable under the tenancy agreement; and (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Residential Tenancy Policy Guideline #2 defines "good faith" as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End

Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

Based on the evidence before me, I find that the landlord has sufficiently established that he intends to move him and his family into the property. I accept the landlord's testimony that he tenants to use the property has his family's primary residence and for the purpose of allowing both he and his wife to work from their home.

I make this finding in part because the landlord has issued Notices to all of the tenants who currently reside on the property. There is no evidence before me that the other tenants have indicated the property or their units were in need of repair. I find it is unlikely, on a balance of probabilities, that a landlord would end the tenancies of two other tenants if the landlord was trying to avoid responding to one of the three tenants requests for repairs.

I find the tenant has failed to provide any evidence to establish that landlord does not have this intent. Furthermore, while the guideline above states the burden rests with the landlord, I find it is also not sufficient for the tenant to simply state that he doesn't believe the landlord is going to use it for the stated purpose.

As a result, I find the landlord is entitled to end the tenancy in accordance with the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on November 22, 2016.

Based on the above, I dismiss the tenant's Application for Dispute Resolution seeking more time and to cancel a notice to end tenancy without leave to reapply.

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 landlord on November 22, 2016 complies with the requirements set out in Section 52.

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*.

However, as to the effective date of the Notice Section 53 of the *Act* allows that if a landlord or tenant gives notice to end a tenancy effective on a date that is earlier than the earliest date permitted under the applicable section of the *Act*, the effective date is deemed to be the earliest date that complies with the relevant section.

As the effective date is contingent upon the date the tenant receives the Notice, pursuant to Section 49(2), and I have determined the tenant received the Notice on December 5, 2016 I find the effective date of the Notice must be changed, in accordance with Section 53 to February 28, 2017.

Conclusion

I find the landlord is entitled to an order of possession effective **February 28, 2017 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: January 20, 2017

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Residential Tenancy Branch