



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, FF, OLC

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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

## 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 an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

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

## Background and Evidence

The tenancy began on or about August 1, 2015. Rent in the amount of \$1600.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$800.00. The tenancy is a on a month to month basis at this time.

The landlord gave the following testimony. The landlord testified that they issued a Two Month Notice to End Tenancy for Landlords Use of Property on December 27, 2016 with an effective date of March 1, 2017. The landlords' son testified that he wishes to move into this unit and wants the tenant to move out. MM testified that he and his girlfriend work near the subject unit. MM testified that he has roots in the community and that he wishes to be in close proximity to his ailing father. MM testified that he wishes to move into this unit as opposed to his one bedroom unit across the street as this unit is a two bedroom and suits his needs more effectively. MM testified that his parents English is poor and that they were trying to be flexible in trying to accommodate the tenants and discussed a short three month term that would have

expired on March 1, 2017 but those discussions were unproductive. MM testified that they were not seeking an illegal rent increase as suggested by the tenants and that it was a discussion in regards to the terms of a short fixed term tenancy. MM testified that the tenants were adamant that they wanted to stay until August 1, 2017. MM testified that the tenant's timeline was too long and that it didn't work for him as he wanted to move into the unit with his girlfriend.

The tenants gave the following testimony. The tenants feel the notice is "unfair", feels discriminated against, and that the landlord "has acted in bad faith". The tenants testified that they just wants to stay here and deal with his sick child's issues and will move out by August 1, 2017. The tenants testified that the landlords' son could move into his one bedroom condo across the street and doesn't need to move into this unit. The tenants testified that the landlord was upset that they would not accept an illegal rent increase of \$200.00 per month and that's the reason they served the notice to end the tenancy.

### Analysis

Subsection 49(3) of the Act states 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.

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 tenants received the 2 Month Notice on December 27, 2016, and filed their application to dispute it on January 6, 2017. The tenant's application is within the 15 day time limit under the Act. Therefore, the onus shifts to the landlord to justify the basis of the 2 Month Notice.

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

*A claim of good faith requires honesty of intention with no ulterior motive...*

*...*

*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.*

The tenants have called into question whether the landlord issued the notice in good faith. The landlord and her son both gave testimony during this hearing. I found both to be clear, concise and credible while giving testimony. MM outlined the plans for his future that included being on his own while still being in close proximity to his family. MM also provided details as to his roots in that community and the need to be close to his place of work, his girlfriend's place of work and close proximity to his ailing father.

The landlord and her son both spoke of only the future and family arrangements and made no reference to past issues with the tenants or any malice for them. MM testified that his parents were willing to extend the tenancy several months but the tenants' demands for a late summer move out was not in keeping with the family plans. The tenants were afforded the opportunity to challenge and question all witnesses. The tenants have not provided sufficient evidence of bad faith.

Based on all of the above, the insufficient evidence of bad faith, and on a balance of probabilities, I must dismiss the tenant's application. The Two Month Notice to End Tenancy for Landlords Use of Property remains in full effect and force. The tenancy is terminated.

Based on the above facts I find that the landlord is entitled to an order of possession pursuant to section 55 of the Act. 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.

The tenant's application is dismissed in its entirety without leave to reapply.

Section 53 of the Act addresses incorrect effective dates as follows:

**Incorrect effective dates automatically changed**

- 53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the

other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

The landlord wrote that the effective date on the notice is March 1, 2017 however as noted by Section 53 of the Act, it is corrected to February 28, 2017. The order of possession will reflect the corrected date of February 28, 2017.

#### Conclusion

The landlord is granted an order of possession. The Notice remains in full effect and force. The tenant's application is dismissed in its entirety without leave to reapply.

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: February 01, 2017

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Residential Tenancy Branch