



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1030015 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed January 13, 2017 wherein the Tenant sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on December 28, 2016 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference at 10:30 a.m. on February 7, 2017 and February 21, 2017. Both parties called into the hearing, as did a witness for the Tenant and a witness for the Landlord. The Landlord was also represented by legal counsel.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Landlord failed to note the Tenant's name on the Notice. The Landlord testified the Tenant was personally served the Notice on December 30, 2016; further the Tenant confirmed receiving the Notice on December 30, 2016. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Notice to include the Tenant's name.

Issues to be Decided

1. Should the Notice be cancelled?

2. Should the Tenant recover the filing fee?

Background and Evidence

This tenancy has been the subject matter of two previous arbitrations. The file numbers related to those two hearings are noted on the unpublished cover page of this my Decision. During the October 18, 2016 hearing, Arbitrator Maddia canceled notices to end tenancy issued in August and September of 2016 as the Landlord failed to attend. During the December 23, 2016 hearing, Arbitrator Morrison found that a 2 Month Notice to End Tenancy for Landlord's Use issued in October 2016 to be invalid on its face as the Landlord failed to indicate their status as a corporation.

Following the December 23, 2016 hearing, the Landlord issued the Notice which is the subject of these proceedings.

At the February 7, 2017 hearing, the parties agreed to the following facts:

- The tenancy began February 1, 2006.
- The Tenant paid a security deposit of \$375.00.
- The current rent is \$881.50 which includes appliances.
- The property is a duplex, which includes rental unit A and rental unit B. The Tenant rents rental unit B.
- The other side of the rental unit is rented to S.J.
- The Landlord, S.M., through his corporation, purchased the property in July of 2016.
- The Landlord has issued four 2 Month Notices to End Tenancy for Landlord's Use pursuant to section 49 of the *Residential Tenancy Act*, including Notices issued on the following dates:
 - August 2016 (the day of the month was not noted) (hereinafter referred to as the "August Notice");
 - September 2, 2016 (the "September Notice");
 - October 29, 2016 (the "October Notice"); and,
 - December 30, 2016 (the "December Notice").
- The Tenant applied for Dispute Resolution on January 13, 2017 alleging the December Notice was not issued in good faith.

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* provides that when a Tenant applies to cancel a notice to end tenancy, the Landlord bears the burden of proving the reason they wish to end the tenancy.

Residential Tenancy Policy Guideline 2 further provides that:

“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 demonstrates they do not have an ulterior motive for ending the tenancy”.

Accordingly, the Landlord presented their case first.

Landlord's Evidence

The Landlord's representative, S.M., testified that he is the sole director of the company which owns the rental property. Introduced in evidence was a BC Company Summary search dated September 6, 2016 confirming this information. S.M. also testified that he holds all of the voting shares of the company.

S.M. testified that he issued the December Notice as it is his intention to move his mother, N.M., into the rental unit. He confirmed that N.M. currently lives in another property which she owns. He further stated that it is his mother's intention to move into the rental unit and take some time to decide what to do with her home.

S.M. testified that his mother expects to have a total right knee replacement. He also stated that she has issues with her right ankle which may also require surgery. He stated that the rental unit is more appropriate for his mother as a result of her mobility issues. He stated that his mother's current home has a kitchen and bedroom on the 2nd floor such. The rental unit has a bedroom on the main floor with the kitchen which will allow her to essentially live on one floor once she has her surgery and thereby minimize the use of stairs.

In support, the Landlord provided a letter from N.M.'s orthopedic surgeon, Dr. P.D., which reads in part as follows:

“...[N.] has degenerative changes of her knees and right ankle. At this time, she is on the surgical waitlist for a right total knee replacement. She is waiting to be seen by the new joint program at [name of medical clinic withheld]. She will go on the waitlist once she has been cleared by the New Joint Program. The wait time for surgery after being cleared, is approximately 12 to 18 months. A CT scan has been ordered for her right ankle and this diagnostic test has not been booked yet as there is a wait time for CT scans. Recover after a total knee replacement is approximately 6 months...”

S.M. further submitted that the rental unit is close to his mother's work at a flooring company. He also testified that the rental unit is close to his place of work which will make it easier to attend to his mother's needs both before her surgery and when she is recovering.

S.M. stated that he intends to do minor modifications to the rental unit to prepare it for his mother, such as installing grab bars. It is his intention to move her to the rental unit as soon as possible and in any case by March 15, 2017. He confirmed that he has made arrangements for movers and in support he provided an email from J.A. dated January 30, 2017 providing a quote for the cost to move N.M. on March 15, 2017.

N.M. also testified on behalf of the Landlord. She confirmed that it is her intention to move into the rental unit as soon as it is available. She confirmed that the rental unit is more appropriate as the kitchen and bathroom are on the main floor which means she could just "walk in" and be ground level. She also stated that when she has her surgery she intends to put one of her beds downstairs so that she can essentially live on one floor. She confirmed that in her current home, she has to go upstairs.

During N.M.'s testimony, the Tenant stated that she acknowledged and accepted that N.M. has mobility issues, and will require knee replacement surgery.

The Tenant also cross-examined N.M. She stated that she had called the office of the orthopedic surgeon and then began asking N.M. questions about whether she had received various forms from her doctor. I informed the Tenant I would not allow her to cross examine N.M. in such a manner, as the specifics of N.M.'s required surgery was contained in her doctor's communication and any general information the Tenant may have obtained through calling the medical clinic would not affect the validity of this information. I further informed the Tenant that the *Act* was clear that the family member must *intend* to reside in the rental unit, not that they *need* to reside there.

The Tenant also questioned N.M. whether the home she owned and in which she currently resides, had a basement suite. N.M. testified that her home has a basement suite and that it is occupied.

Tenant's Evidence

At the continuation of the hearing on February 21, 2017 the Tenant testified in response to the Landlord's submissions.

The Tenant stated that S.M. introduced himself to her on July 28, 2016. She stated that he informed her that the sale had been completed and he was the new Landlord. She further stated that they had a discussion about rent and he confirmed who would be managing the property.

The Tenant testified that on July 31, 2016 she received a knock on her door from the Landlord's brother M.M. at which time he served her with the July Notice; the July Notice indicated the Landlord intended to renovate the rental unit.

In response to the July Notice, the Tenant filed an Application for Dispute Resolution. She stated that she was not sure who was the Landlord and as such she served the S.M., M.M. and the company.

The Tenant stated that the Landlord then sent the August Notice which indicated that he wished to move his mother into the rental unit. The Tenant amended her application to dispute both the July Notice and August Notice. The Landlord did not attend the hearing which occurred on October 18, 2016.

The Tenant testified that on October 29, 2016 she received the October Notice. She stated that it was in essence a duplicate of the August Notice although at this time she received further information from the Landlord.

The Tenant stated that she believes S.M. did not issue the December Notice in good faith. In support she stated that she received an email from S.M. dated December 2, 2016 in which S.M. stated that his *entire* purpose for purchasing the property was to move his mother in. She stated that as the August Notice indicated that he wished to renovate the unit this was proof he was not being honest.

The Tenant also stated that she believes the Landlord just wants her out. She said this was evidenced by his language in this email wherein he wrote: "You can just leave at any time".

The December 2, 2016 email from S.M. to the Tenant was provided in evidence and reads as follows:

"...Please feel free to move out of my property anytime you like with out notice as my mother requires surgery that can't be done until she is in possession of unit #3. She has serious illness that requires her to be placed in a home before her surgery(s). I sincerely hope you find a property so my mother can deal with her issues and move on in life. She needs a home that has a kitchen on the main level and with in walking distance to

her work (should she be able to walk to work after her surgery(s). That is one of the reasons I purchased [address of rental property].

In addition, I will be working with a lawyer to represent our interest to ensure all laws/tenancy act is correctly followed. I will have a letter of representation sent to you asap. Once received please have all correspondence go directly to her/him as they will be acting as my agent.

I am sorry that your previous landlord has not dealt with these issues. I am doing my best to assist you while you are in my property. Again, please feel free to leave anytime you like without notice to assist in your quest to find a new rental property prior to my mother taking possession of my property.

Have a good evening [V.]. If you need a reference for your ability to pay rent on time; I am happy to help.

If I can assist further I am available to you."

[Reproduced as Written]

The Tenant further stated that the rental unit is in a duplex and the other unit "A" was empty at the time she received the August Notice. She submitted that if S.M. needed the rental unit, he could have given rental unit A to his mother. She stated that once the renovations were completed for unit A it was rented and has been since September 1, 2016.

The Tenant claimed that the Landlord said the August Notice was issued by mistake but since he did not attend the hearing on October 18, 2016, she has never been told why that was a mistake. She stated that as soon as she disputed the August Notice, the Landlord issued another Notice to End Tenancy.

The Tenant submitted that the Landlord also did not offer unit A to her when he issued the August Notice. She stated that at this time she was under the impression that he was evicting her due to renovations. She also stated that she tried to resolve this by sending emails to both the Landlord and his brother but they simply ignored her.

The Tenant submitted evidence regarding the Landlord's marketing for unit A, including copies of online ads posted for this unit. She stated that originally he wanted \$1,250.00 per month in rent as evidenced by the ad posted on August 5, 2016. She noted that he then advertised it for \$1,400.00 on August 11, 2016. She also stated that there were 20-30 people lined up to view unit A.

The Tenant also submitted that S.M has not been maintaining the property as required as he simply wants to end her tenancy. For example she stated the Landlord was to fix her door by October 29, 2016, yet the door was not fixed until January 2017. In terms of other examples, the Tenant stated that her hot water heater went on Saturday February 18, 2017. She stated that she sent an email to S.M. on Sunday February 19, 2017. The plumber arrived on Sunday, and stated that he could not fix it on Monday but could do it on Tuesday. The Tenant stated that she told the plumber that Tuesday did not work because she was in this hearing. The plumber then said "you can get someone else to do it". She stated that she felt like he had no intention of attending to this repair. She said that she called around and discovered that other plumbers could have done the work on Monday at a lower cost. She stated that this is evidence that the Landlord is not acting how he is supposed to act as Landlord.

The Tenant further testified that the Landlord has also "played games" with her rent payments, refusing her e-transfers, etc.

The Tenant stated that the Landlord has also asked if he could come into the rental unit to ascertain what work needs to be done for his mother's accommodation. She did not believe this was appropriate so she called the Residential Tenancy Branch who informed her that she did not have to accommodate this request. She stated that she has no problem allowing him access, but he has to follow the *Act*.

The Tenant also submitted that the December Notice utilized a form which changed as of December 2016 and that these changes created ambiguity. For greater clarity I reproduce the relevant portions of those forms as follows.

The October Notice was issued on #RTB-32 (2016/08) and reads as follows:

A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.

The December Notice was issued on #RTB-32 (2016/12) and reads as follows:

The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Tenant stated that the above created ambiguity and that the ambiguity of these Notices is relevant to whether the Notices were issued in good faith. When I asked the

Tenant what specifically was ambiguous about the December Notice she failed to respond.

The Tenant also drew my attention to the following case 1998 case of *Gallupe v. Birch* wherein the Honourable Mr. Justice Taylor found that it is not up to the Tenant to prove that the Landlord is acting in Bad Faith.

(p. 35) [35] I conclude from the observations of Taylor J.A. and Melvin J. that a consideration of dishonest motive or purpose is a matter that should be undertaken in a consideration of the good faith of a landlord in serving an eviction notice under s. 38(3). When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.

The Tenant submitted that the “dishonest purpose” is that the Landlord stated that he wanted to move his mother in, yet initially tried to evict her for renovations and then rented out unit A, when it was vacant and his mother could have moved in.

Landlord's Reply

In reply S.M. testified as follows. He confirmed that he purchased the property through his company in July of 2016. He stated that he purchased the property with the intention of it being occupied by his mother at some point in time, but he also purchased it as an investment property. He noted that in his email sent December 2, 2016 he wrote it was “one of the reasons” he purchased the property, not the *only* reason as suggested by the Tenant.

S.M. stated that he needed to finish off the draining and complete some renovations to Unit A prior to re-renting it. He stated that it was always his intention to rent it out and that it was rented as of September 1, 2016.

S.M. further stated that initially he had hoped to substantially renovate unit B and also re-rent it, but then his mother had a “set-back” in terms of her mobility and he realized it was time to make the unit available to her.

S.M. stated that he was not able to attend the hearing on October 18, 2016 hearing due to technological issues and that it was always his intent to attend that hearing. He

stated that he first called on his land line and then his cell phone. He also testified that he applied for review consideration but it was denied because of lack of evidence regarding his initial call on his land line.

Residential Tenancy Branch records confirm that on October 26, 2016 the Landlord applied for Review Consideration of the October 18, 2016 Decision. In his written submissions, the Landlord wrote that he first called in on a land line and was unable to connect to the hearing and he then called in on his cellular telephone. The Arbitrator considering his Application for Review Consideration dismissed his Application as the Landlord was unable to provide evidence of his initial call on his land line.

In reply to the Tenant's claims that the Landlord has not taken care of the door repair to the rental unit, S.M. stated that he called a handyman right away. He further stated that the handyman fixed the door within seven to ten days of the last arbitration but brought the wrong door sweep which delayed its final repair.

In terms of her claims regarding the hot water tank, S.M. stated that he received an email from the Tenant on Sunday and he responded at 8:30 a.m. on that same day. He said that he called the first two plumbers in his phone and they did not answer and the third did and they were there within hours of being notified which he stated was between 10:30-11:30.

S.M. also stated that he had email dialogue with the Tenant who confirmed that she also had difficulty reaching plumbers. While he agreed the Tenant found someone who could have attended to it sooner, he stated that he had already given his credit card and his commitment to the plumber who was hired and he could not write off that commitment at that time.

S.M. also stated that there have not been any other issues raised by the Tenant regarding maintenance and repairs of the rental unit.

S.M. reiterated that he has no intention to rent the rental unit to anyone else as alleged by the Tenant. He stated that he purchased the property so that one day she could live there and now he is able to offer this to her. He further stated that he was raised by his mother, who is a single mother, and she looked after him and he now wants to look after her.

S.M. stated that the Tenant has gone to his mother's work, called her doctor and otherwise tried to prove that she is not moving in there. He stated that he realized she did not want to move, but the fact is his mother is moving into the rental unit. He confirmed that he would like to install grab bars and a shower on the main floor to make

it more functional for her and wishes to do so as soon as possible so she can move in by March 15, 2017.

The Tenant also cross-examined S.M.

She suggested to him that the plumber was “his plumber” and would address the issue on Monday. In response, S.M. stated that the plumber initially said they could do it on Monday, and then they said Tuesday. He stated that he was then informed that the plumber contacted the Tenant who said Tuesday morning would not work, and it was scheduled to Tuesday afternoon (the same day as the hearing).

The Tenant asked S.M. what the “other reason” was for purchasing the rental building to which he replied was an investment property.

The Tenant suggested to the Landlord that he owns other rental properties to which he replied that he owns his personal residence and 30% of his office building and does not own any other rental properties.

The Tenant then suggested that S.M. did not live near the rental unit as evidenced by internet advertising. S.M. confirmed that he works approximately four to six blocks away from the rental unit and provided the address of his place of work.

Analysis

The Tenant seeks an order canceling the December Notice.

As noted earlier in this Decision, the December Notice was issued on #RTB-32 (2016/12) and the following reason was checked off on the form:

The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The December Notice is a 2 Month Notice to End Tenancy for Landlord's Use and was issued pursuant to section 49(4) of the *Residential Tenancy Act* which reads as follows:

49(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

A family corporation is defined by section 49 as follows:

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

S.M. testified that he has all of the voting shares of the corporation. The Tenant did not dispute this claim. Accordingly, I find that the Landlord is a family corporation as defined by section 49 and that the corporate Landlord issued the appropriate notice.

The Tenant suggested the wording of the December Notice was ambiguous. While the form used for the October Notice and the December Notice are indeed different, I find nothing ambiguous about the December Notice, as the wording of that Notice most closely parallels the wording in section 49(4).

The Tenant alleged the December Notice was not issued in good faith.

The good faith requirement in a section 49 Notice to End Tenancy is dealt with in *Residential Tenancy Branch Policy Guideline #2* which provides in part the following:

GOOD FAITH REQUIREMENT

Good faith is 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.

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. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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

After careful consideration of the evidence before me, and the testimony of the parties, I find that the Landlord has met the burden of proving that the December Notice was issued in good faith.

I find that S.M., the person owning voting shares in the corporation, honestly intends to move his mother, N.M. into the rental unit. I further find N.M. also has such an honest intention to move into the rental unit.

I accept N.M.'s testimony that her reasons for moving into the rental unit are due to mobility issues related to her right knee and ankle. I accept the evidence of S.M. and N.M. that the rental unit is preferable to her own home as the layout of the rental unit minimizes the number of stairs she must navigate. I further accept their testimony that this will be beneficial to N.M. at present while she deals with related pain, as well as during her recovery period from her required surgery.

As noted, the Tenant initially confirmed that she accepted that N.M. required knee replacement surgery. She then attempted to introduce evidence regarding the timing of this surgery, through cross examination of N.M. as to whether she had received various forms from the clinic in which N.M.'s orthopedic surgeon works. The letter from N.M.'s orthopedic surgeon speaks for itself and confirms that N.M. has degenerative changes of her knees and right ankle and that she is on the surgical waitlist for a right total knee replacement. I accept the information contained in this letter as to Dr. P.D.'s estimates as to the timing of N.M.'s surgery and recovery and find that any *general* information the Tenant may have provided regarding the *usual* timeline to be of no assistance.

The Tenant also wished to introduce witness testimony from her friend, G.M., whom she claimed also had similar surgery. I find that her friend's personal medical issues and related treatment have no bearing on the issue before me, namely, whether the December Notice is valid and was issued in good faith.

I also accept the evidence of S.M. and N.M. that the rental unit is closer to their employment which they believe will benefit N.M. at this time and when she is recovering from surgery.

In all, I found S.M. to be sincere and honest in his testimony regarding his desire to look after his mother after all the years she cared for him as a single parent. I further find his intentions to be honest, absent of any malice or ulterior motive to defraud or seek an unconscionable advantage. I also find N.M.'s intention to move into the rental unit to be honest, absent of any malice or ulterior motive to defraud or seek an unconscionable advantage.

The Tenant submitted that S.M. wrote in his December 2, 2016 email that the only reason he purchased the duplex was to move his mother in. Earlier in this Decision I reproduced that communication as it is clear the Tenant has misconstrued this email. S.M. wrote that having his mother live in the rental unit was "*one* of the reasons" (emphasis added), not the only reason. He confirmed in his testimony that he also purchased the property as an investment. I accept his evidence that although he initially planned to renovate the subject rental unit he then decided to offer the rental unit to his mother.

I reject the Tenant's submission that the December 2, 2016 email from S.M. indicated a malice intention by his offer that she be permitted to move out without proper notice. I accept S.M.'s testimony that he wished to inform her that she need not give proper notice if she found alternate accommodation, and that he made this offer to assist her, not as an offence.

The Tenant submitted that N.M. owns her residence, and that this residence has a suite. No further evidence was provided as to the suitability of this suite for N.M.; in any case, whether this is an option for N.M. or not, does not negate my finding that she intends in good faith to reside in the subject rental unit. As noted during the hearing, I need not find that N.M. *must*, or *needs* to, move into the rental unit, only that she *intends* to. This is clearly a time of change for N.M. and I accept her testimony that she intends to consider her options regarding her home once she has moved into the rental unit.

The Tenant submitted that N.M. could have moved in the other unit in the duplex. At the time the December Notice was issued, the other unit was rented and was therefore not an option. I accept that the other rental unit was available for a period of time; however, I note that the Landlord is entitled to make business choices regarding this investment property such as renovating and renting the other unit at a higher price. The question before me is whether N.M. as a close family member of S.M. intends in good faith to occupy the subject rental unit and I find that the availability of this other unit at a previous time does not prove the Landlord had an ulterior motive when issuing the December Notice.

I am not persuaded by the Tenant's submissions that the cancellation of the previous Notices indicates a lack of good faith with respect to the December Notice.

I find that the Landlord attempted to call into the October 18, 2016 hearing and was not able to do so. Branch records confirm he applied for Review Consideration on the basis that he was unable to call into the hearing for reasons which were unanticipated and beyond his control. While he was not successful in his Application for Review Consideration, I accept his testimony that he intended to participate in the October 18, 2016 hearing.

Further, the October Notice was cancelled as the Landlord failed to indicate their status as a family corporation.

I do not accept the Tenant's submissions that the Landlord has failed to honour their obligations to repair and maintain the rental unit. I accept S.M.'s testimony that he hired a handyman to address the issues with the door shortly after the parties' last attendance at arbitration. Although this repair was incomplete, I do not accept the Tenant's submissions that this indicates an ulterior motive. I further find S.M. responded promptly to the Tenant's concerns regarding the hot water tank and made arrangements to have this addressed as soon as possible.

For all of the above reasons, I dismiss the Tenant's application to cancel the December Notice.

I find the Notice complies with section 52 of the *Residential Tenancy Act* which reads as follows:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

The Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*, which reads as follows:

- 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.

Accordingly, I **grant the Landlord an Order of Possession effective two (2) days after service on the Tenant.** This Order may be file and enforced in the B.C. Supreme Court as an Order of that Court.

As the Tenant has been unsuccessful, I decline her request for recovery of the filing fee.

Conclusion

The Tenant's application to cancel the December Notice is dismissed. The Landlord is entitled to an Order of Possession.

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: March 3, 2017

Residential Tenancy Branch