



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNL, FF

### Introduction

The hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

The Tenant stated that on February 03, 2017 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Agent for the Landlord. The Agent for the Landlord stated that these documents were served to him; however he believes he received them on February 01, 2017.

On February 27, 2017 the Landlord submitted 4 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were personally served to the Tenant, although he cannot recall the date of service. The Tenant acknowledged receipt of these documents, although she cannot recall the date of service, and they were accepted as evidence for these proceedings.

On February 28, 2017 the Tenant submitted 12 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were personally served to the Agent for the Landlord on February 05, 2017 or February 06, 2017. The Agent acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that on March 02, 2017 she submitted 4 pages of evidence to the Residential Tenancy Branch, which I did not have at the time of the hearing. The Tenant stated that these documents were personally served to the Agent for the Landlord's mother on March 05, 2017. The Agent for the Landlord stated that he has not received these documents as he has not been home for several days. As these documents were not served at least 14 days prior to the hearing, as is required by the Residential Tenancy Branch Rules of Procedure, and they have not been received by the Agent for the Landlord, I did not accept them as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- this tenancy began in July of 2014;
- there is a written tenancy agreement that identifies the Landlord as the Agent for the Landlord's mother;
- rent of \$800.00 is due by the first day of each month;
- on January 30, 2017 the Tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use,;
- the Notice to End Tenancy declares that the Tenant must vacate the unit by April 01, 2017;
- the Notice to End Tenancy declares that the tenancy is ending because the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse; and
- rent has been paid for March of 2017.

The Agent for the Landlord stated that he is a co-owner of the rental unit; he is currently living in a bedroom in the upper portion of the residential complex; additional family members are moving into the upper portion of the complex; and he intends to move into the rental unit as soon as possible.

The Tenant stated that she does not believe that the Agent for the Landlord intends to move into the rental unit, although she could not explain why she does not believe it.

Analysis

Section 49(4) of the *Residential Tenancy Act (Act)* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I find that the Tenant has submitted insufficient evidence to refute the Landlord's claim that he intends to move into the rental unit. In reaching this conclusion I was heavily influenced by the absence of any evidence that corroborates the Tenant's suspicion that the Agent for the Landlord will not move into the rental unit or that refutes the Agent for the Tenant's testimony that he intends to move into the rental unit.

I find that the Landlord has the right to end this tenancy pursuant to section 49 of the *Act*, and I dismiss the Tenant's application to set aside the Notice to End Tenancy. As the application to set aside the Notice to End Tenancy has been dismissed, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Section 49(2) of the *Act* stipulates that a Two Month Notice to End Tenancy must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the rent is due for this tenancy by the first of each month, a Two Month Notice to End Tenancy must end the tenancy on the last day of the month.

The Two Month Notice to End Tenancy that was served on January 30, 2017 could have declared that the tenancy ended on March 31, 2017 or April 30, 2017. The tenancy cannot end on April 01, 2017 on the basis of this Two Month Notice to End Tenancy, however, because that is not the day before the day in the month rent is due.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is April 30, 2017. At the hearing I advised the parties that the tenancy will end on April 01, 2017 however I now realize that is incorrect. The correct effective date of the Two Month Notice to End Tenancy is April 30, 2017 and the Tenant may remain in the unit until that date unless she serves notice to end the tenancy earlier, in accordance with section 50(1)(a) of the *Act*.

The parties were advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find that the Tenant has failed to establish that the Notice to End Tenancy should be set aside and I therefore dismiss her application to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective on **April 30, 2017**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and 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: March 09, 2017

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Residential Tenancy Branch