



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, LRE, LAT, FF

### Introduction

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;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 2 Month Notice, the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 2 Month Notice, the tenant's application and their respective evidence.

### Issue(s) to be Decided

Is the tenant entitled to cancellation of the 2 month Notice pursuant to section 49? If not, should the landlord be issued an order of possession on the basis of the 2 Month Notice?

Should the tenant be authorized to change the locks on the rental unit? Should restrictions be placed on the landlord's right to enter the rental unit?

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

### Background and Evidence

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

The parties agreed on the following evidence. This month-to-month tenancy started approximately 3 years ago. The current rent is \$1,625.00 payable on the first of each month. On February 18, 2017 the landlord and tenant had an email conversation discussing and agreeing to a rent increase. On February 22, 2017 the landlord issued an email to the tenant advising him of her intention of “finding a new tenant for the condo”. The landlord advised the tenant she intended to arrange viewings of the rental unit on February 24, 2017. The parties were unable to agree to the viewings and it did not take place.

The landlord issued the 2 Month Notice on February 23, 2017 and provided the reason for the notice as; the rental unit will be occupied by the landlord or the landlord's close family member. When the tenant inquired about the family member the landlord responded that the “potential tenant is a close family member who is no longer going to be residing in their current dwelling”.

The landlord testified that she was purposefully vague in the information she provided to the tenant as she felt that the circumstances were personal. The landlord said she did not want to divulge personal information to the tenant. The landlord testified that the family member whom she intended to occupy the rental unit was either her mother or father. She said that while it was expected that one of her parents would occupy the rental unit, it was undecided at that time who would be the one to occupy and so the viewing was scheduled for her parents to inspect and decide.

The landlord testified that while she owns two properties the other rental property currently has a tenant in a fixed term lease and therefore it is not possible for either of her parents to occupy that unit.

The landlord's witness gave evidence that he is currently living outside of the province but wishes to return to British Columbia and take residence in the rental unit. The landlord testified that as of the date of the hearing her mother resides in a rental unit by herself in the province while her father lives outside of the province. The landlord said the current plan is for her father to occupy the rental unit.

### Analysis

In order to evict a tenant for landlords' use of the property the landlord has the burden of proving the reasons on the Notice.

The tenant raised the issue of the intention of the landlord and his confidence in the plan the landlord says they have; what I found was essentially a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes that 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 Guideline reads in part as follows:

*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.*

The tenant has raised the good faith intention of the landlord which I find has some basis. From the evidence before me I find that there is sufficient confusion about the landlord's intention based on her initial vagueness. While the landlord has provided an explanation for the why she was purposefully misleading in the information to the tenant I find the explanation to be somewhat unconvincing. The landlord stated that she did not wish to disclose personal circumstances to the tenant. The landlord's was not required to disclose the circumstances that led to her parents requiring the rental unit but I find that her description of the potential viewing in her email correspondence was purposefully misleading. In her email correspondence the landlord also offers the tenant the option of remaining in the unit while the showings occur. I find that the offer to have the tenant remain in the rental unit for the showing inconsistent with her stated desire for privacy from the tenant.

The landlord failed to identify that she intended one of her parents to occupy the rental unit. She responded to the tenant's inquiry by stating that the "potential tenant is a close family member". The 2 Month Notice provides a list of relations that are considered close family members for the purpose of the *Act*. The landlord did not provide any information about the familial relationship that made the potential tenant a close family member and simply repeated that phrase with no further explanation. I find the landlord's behavior and response raises questions about how much this proposed move was known at the time. If the landlord knew that the potential tenant was one or the other of her parents, she could have disclosed that information without providing additional personal details. I find the landlord's explanation for her lack of disclosure to be unconvincing.

I find on a balance of probabilities that there is sufficient doubt regarding the intention and motivation of the landlord. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the *Act*.

I find that the tenant has provided insufficient evidence regarding his application to change the locks of the rental unit and place restrictions on the landlord's right to enter the rental unit. The parties testified that the landlord cancelled the potential viewing of the rental unit on February

24, 2017 when the tenant protested. There is no evidence that the landlord has violated the tenant's right to the rental unit. Under the circumstances I decline to issue an order but will reiterate that the tenancy is bound by the *Act* and its provisions.

As the tenant's application was primarily successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. As I have found that this tenancy will continue I find that the tenant may deduct the \$100.00 filing fee from the next months' rent due.

### Conclusion

The tenant's application to cancel the 2 Month Notice is allowed. The 2 Month Notice is of no continuing force or effect. This tenancy will continue until ended according to the *Act*.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing his monthly rent by that amount on his next monthly rental payment to the landlord. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$100.00. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is final and binding and 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 29, 2017

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Residential Tenancy Branch