



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC CNL OLC

### Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- cancellation of a 2 Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 47 of the *Act*;
- a Monetary Order for loss of quiet enjoyment pursuant to section 67 of the *Act*; and
- an Order for the landlord to comply with the *Act* pursuant to section 62 of the *Act*.

Both the tenant and the landlord's son/agent, A.G. appeared at the hearing. Both parties were given full opportunity to be heard, to present evidence and to make submissions.

A.G. provided testimony that a 2 Month Notice to End Tenancy ("2 Month Notice") was personally served to the tenant on February 23, 2017. The tenant acknowledged receipt of this notice. The tenant served the landlord in person with his Tenant's Application for Dispute Resolution and evidentiary package ("Tenant's Application") on March 1, 2017. A.G. acknowledged receipt of these packages. I find that all of the above documents were duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Can the tenant cancel the landlord's 2 Month Notice? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a Monetary Order?

Should an Order be made for the landlord to comply with the *Act*?

## Background and Evidence

Testimony was provided by A.G. that this tenancy began in August 2013. Rent is \$500.00 per month and no security or pet deposit are held by the landlord.

A.G. testified that he lives on the main floor and in November 2016 he and his wife became parents. The landlord wishes for his other son (A.G.'s brother) to move into the basement suite. A.G. explained that his brother is currently living on the main floor and is not afforded any privacy as the family attends to the needs of their newborn child. The landlord stated that it is for this reason that a 2 Month Notice was issued to the tenant.

During the course of the hearing the tenant explained that he felt this notice was being issued in bad faith as the landlord had recently been unsuccessful in attempting to obtain an order of possession for cause based on his issuance of a 1 Month Notice to End Tenancy for Cause (1 Month Notice) to the tenant. The landlord's attempt to end this tenancy for cause was denied following a hearing before the *Residential Tenancy Branch* on January 20, 2017. In addition, the tenant stated that he was issued a hand written "Notice to End Tenancy" in September 2016.

The tenant is also seeking a Monetary Order of \$500.00 for loss of quiet enjoyment of the rental unit. The tenant explained that because of the time he has spent disputing various notices of eviction he has been unable to focus on his studies. Additionally, the tenant is seeking an Order pursuant to section 62 of the *Act* for the landlord to comply with the *Act* and to be prevented from issuing further notices to end tenancy.

## Analysis – Order of Possession

A.G. testified that the landlord issued a 2 Month Notice so that the landlord's son may move into the rental unit. In order for a 2 Month Notice to be successful, two elements must be present. The first is that the reason cited on the 2 Month Notice falls within the accepted "reasons" listed in section 49 of the *Act*. In this case, the landlord has stated on the 2 Month Notice served to the tenant, that *the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child)*. Clearly the landlord's son falls within this definition provided by section 49 of the *Act*.

The second element that must be present is the good faith requirement. *Residential Tenancy Policy Guideline #2* expands on the good faith requirement by noting, "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...the landlord must honestly intend to use the rental unit for the purposes

stated on the Notice to End Tenancy.” The policy guide continues by stating, “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.”

At the hearing, the tenant raised the prospect of the 2 Month Notice having been issued in bad faith and therefore shifted the burden to the landlord to explain whether the current 2 Month Notice was issued because the landlord’s previous two 1 Month Notices did not lead to an end to this tenancy. As part of his evidentiary package, the landlord provided the hearing with a letter from M.G., son of the landlord. This letter from M.G. stated that he “confirmed that [I] intend to move into the basement suite.” Furthermore, A.G. the landlord’s agent presented a plausible explanation as to why his brother (the landlord’s son) would want to occupy the basement suite. The tenant did not challenge the assertion that a baby was recently born into the family and M.G. would wish to occupy the basement suite. The tenant focused solely on the two 1 Month Notices that were issued. When questioned by the arbitrator on this issue, A.G. explained that in fact only one 1 Month Notice was issued and the 1 Month Notice issued in September 2016 was withdrawn. He stated that the landlord genuinely believed that he had reason to issue a 1 Month Notice in December 2016.

Based on the evidence before me, I find that the landlord has met the burden of proof as I find that the written and oral testimony supplied by the landlord provided an adequate explanation for why the landlord was acting in good faith in seeking an end to this tenancy. I provide the landlord with an Order of Possession for April 30, 2017. Pursuant to section 51 of the *Act*, I direct the landlord to waive rent for the month of April 2017.

#### Analysis – Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove his entitlement to his claim for a monetary award.

The tenant centered his argument on the fact that he has suffered a loss of quiet enjoyment because of the time has spent disputing various notices of eviction. *Residential Tenancy Policy Guideline #6* notes that “a landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.”

Little evidence was presented at the hearing that the landlord has in any way harassed or interfered with the tenant. The tenant was unable to provide any examples of a way in which his quiet enjoyment has been affected by the landlord’s actions other than through having to dispute the landlord’s notices to end tenancy. The landlord has issued two notices to end tenancy. Both matters were attended to by the *Residential Tenancy Branch*. This course of action is not unique to this tenancy and the tenant has failed to prove the existence of the damage/loss stemming directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord.

For this reason, I dismiss the tenant’s application for a Monetary Order without leave to reapply.

#### Analysis – Order to Comply with the *Act*

The tenant is seeking an Order under section 62 of the *Act* for the landlord to comply with the *Act*. Specifically, the tenant maintained that he has been unreasonably disturbed by the landlord’s issuance of “3 or 4 one month notices to end tenancy.” Section 62 notes that an Arbitrator “may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.”

The tenant repeatedly noted that he felt the landlord was acting in bad faith in issuing repeated one month notices to end tenancy and was therefore interfering with his ability to enjoy the rental unit. Little evidence was presented by the tenant that the landlord had acted beyond the scope of the *Act*. Issuing consecutive notices to end tenancy for different reasons does not run counter to the provisions contained within the *Act*. For this reason, I am dismissing the tenant's application for an order for the landlord to comply with the *Act*.

### Conclusion

The tenant's application to cancel a 2 Month Notice is dismissed and the landlord is granted an Order of Possession for April 30, 2017. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Supreme Court of British Columbia.

The tenant's application for a Monetary Order is dismissed.

The tenant's application for an Order for the landlord to comply with the *Act* is dismissed.

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: April 3, 2017

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Residential Tenancy Branch