



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF, LAT, OLC

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated March 1, 2017
- b. An order that the tenant be permitted to change the locks
- c. A tenant Order of Possession.
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the tenant resides on March 16, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated March 1, 2017?
- b. Whether the tenant is entitled to an order permitting the tenant to change the locks.
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence:

DC is the daughter of SR. On February 20, 2017 SR was admitted to a long term care facility. The medical evidence indicates that he is incapable of conducting his financial affairs. He will not be returning to live in the property.

The tenancy began on December 15, 2014. The tenancy agreement was oral. The landlord testified it was a month to month tenancy. The tenant testified SR told her she could stay until her son completed university. The tenant's son is part way through a program at the Art Institute. The program has been increased to 2 ½ years. The present rent is \$800 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$250 at the start of the tenancy.

The tenant testified she got along well with SR and often helped with caretaking him.

DC testified she wants to regain possession of the rental property for her own use based on the following evidence:

- She is a part owner of the property in joint tenancy with her father.
- She also owns a property in South Surrey with her husband. However, she is going through marital problems with her husband and has determined that it is necessary to move elsewhere for security reasons.
- Her father agreed that she should move back to the house.
- The property in question is over 100 years old and is in need of repairs. She is not prepared to move to the basement suite that her father occupied as it is not in good condition after a flood occurred.
- The air quality in the rental property is poor.
- She intends to occupy the top portion of the house so that major work can be done to the basement suite.

The tenant gave the following testimony:

- SR told her she could remain in the rental unit until her son completed university.
- She questions the good faith intention of the landlord as she has been given a number of reasons why the landlord wants to regain possession including:
  - The rent paid by the tenant is very low.
  - The landlord's daughter was going to move in.
  - The landlord needs the rental unit to making major renovations.
  - DC has told her she intends to move in.
- The landlord has given her a key to the garage and it is no longer necessary for an order to change the locks.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

### **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.

#### Analysis:

After carefully considering all of the evidence I determined that the landlord DC has a good faith intention to move back to the rental unit for the following reasons:

- I accept her testimony that she is going through marital problems and that there is good reason to leave the premises she is living in with her husband and that this is a reasonable alternative.
- She is an owner of the rental property.

- I do not accept the evidence of the tenant that she and SR had a fixed term tenancy agreement as the tenant failed to present sufficient proof to establish this claim. Further, a fixed term tenancy imposes obligations on both sides. If the tenant vacated she would be obligated to pay the rent until the end of the fixed term. However, the end of the fixed term is too uncertain.
- I do not accept the submission of the tenant that the different reasons given by the landlord proves the she is acting in bad faith. The intention to move in and conduct renovation work in the basement is consistent.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the 2 month Notice to End Tenancy. I order that the tenancy shall end. The Notice was served on the 15<sup>th</sup> day of March 2017. The tenant is entitled to 2 clear months notice ending at the end of the rental payment period. The Act corrects an improperly dated notice. In this case the end of tenancy date has been corrected to May 31, 2017.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession effective May 31, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

As a courtesy to the parties I have included the provisions of section 51 of the Act:

**Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The landlord has provided the tenant with a key so it is no longer necessary to consider the tenant's application to change the locks. All other claims are dismissed including the claim to recover the cost of the filing fee.

**This decision is final and binding on the parties.**

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 19, 2017

---

Residential Tenancy Branch

