



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NICOLAOU PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNL, FF

### **Introduction**

This hearing was convened in response to an application by the tenant filed April 10, 2017 under the *Residential Tenancy Act* (the Act) to cancel or set aside a 2 Month Notice to End Tenancy for Landlord's Use, and to recover the filing fee.

Of primary relevance in this matter is the tenant's dispute of the landlord's good faith intentions respecting the 2 Month Notice to End for Landlord's Use. Both parties appeared in the hearing and had an opportunity to be heard. The tenant was assisted by legal counsel. The landlord was assisted by their agent and building manager. Each party was given full opportunity to present all relevant evidence and provide testimony in respect to the application and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Both parties acknowledged receiving the evidence of the other submitted to this hearing pursuant to the Rules of Evidence. Only admissible evidence relevant to the issues in this matter has been described in this Decision.

### **Issue(s) to be Decided**

Is the 2 Month Notice to End Tenancy for Landlord's Use dated March 31, 2017 valid?  
Is the tenant entitled to recover their filing fee?

### **Background and Evidence**

The tenancy began in 2011. The parties agree the payable monthly rent is \$1059.00 due on the first day of the month. The parties agree that the tenant was given a 2 Month Notice to End Tenancy for the landlord's use dated March 31, 2017. The tenant claims the Notice was inserted under their door but they none the less received it March

31, 2017. I have benefit of a copy of the Notice to End in the approved form, with a stated effective date of May 31, 2016. The reason stated on the Notice is the provision prescribed by Section 49(3) of the Act;

The landlord provided oral and document evidence their 19 year old daughter will be occupying the rental unit, while a college student at a regional university.

**The tenant** disputes the landlord's good faith intentions for issuing the Notice to End at hand. The tenant testified they dispute the landlord will do as they state on the Notice to End and in addition that the landlord has another purpose or motive to end the tenancy: specifically, retribution for not agreeing to a voluntary rent increase and for communicating in the media regarding increases of rent above the regulation amount. The tenant testified it is difficult to truly know the thoughts of the landlord however they believe their position to be true.

The tenant provided the following in support of their application.

1. On February 24, 2017 the landlord requested of them if they would agree to a 12 month tenancy agreement inclusive of rent representing an increase of 15% from the current rent, which the tenant declined.
2. On March 21, 2017 they heard individuals, seen through the 'peephole' of the unit entrance door, talking in the hallway about the location of the water valve and purported to look in the small hold near the entrance of the unit. And, later the electrical power to the rental unit was somehow interrupted.
3. On March 19 and 21, 2017 the tenant was featured in separate media accounts asserting their opposition to inordinate rent increases and their landlord's quest to seek an additional rent increase for the tenant's unit and others in the residential property.
4. The tenant testified that recently the landlord advertised online the upcoming availability of a rental unit in the same residential property.
5. The tenant provided evidence that the resident in #31 has given notice they are vacating the residential property and that the landlord could have chosen #31 for their daughter.

*The tenant provided the resident of #31, SY, of the same residential property as a witness. The witness testified they have sent a text to the landlord that they will be vacating although they have not given the landlord written notice.*

The tenant submitted I should accept the witness's text as valid and adequate notice to the landlord they are vacating.

6. The tenant informed the hearing the landlord has other residential properties, with possible current or upcoming vacancies that can be made available for the landlord's use.

7. The tenant disputes the landlord's daughter intends to occupy the rental unit.

**The landlord** provided a document stating they will be taking possession of the rental unit for the purpose of their 19 year old daughter moving into the unit as their primary residence while attending school until they complete university. The landlord testified they chose the applicant's unit as they, and their daughter, determined it was the most suitable. The landlord stated they required a suite which was not on the ground floor and did not face the alley as features the landlord determined necessary for occupation by their daughter.

The landlord's daughter testified in agreement with the landlord they will be attending a regional university and will be occupying the rental unit in or about June 2017. The landlord testified they determined this course in mid-March 2017 and it was independent of other factors in contention. In response to the tenant's evidence the landlord responded as follows.

1. The landlord testified that on information from the Residential Tenancy Branch they approached relevant tenants of the residential property with a view to obtaining agreement on a proposed increase of the rent by way of a new tenancy agreement for a minimum 12 months fixed term. It must be known that neither party of this matter agreed the proposal turned to a written agreement document. The landlord testified that at least one of the tenants canvassed agreed to the voluntary rent increase identified by the landlord as the tenant's witness in this matter (#31).

2. The landlord testified the residential property has in recent past undergone plumbing related issues and remediation but cannot explain the tenant's testimony regarding a water valve. They testified they became aware of what

they describe as possibly an electrical “glitch” resulting in the tenant’s electrical service “tripping a fuse” to the unit. The landlord acknowledged not knowing of the cause and once alerted to an issue by the tenant responded to it quickly, but could not provide a reason for the “glitch”. The landlord testified a fuse “tripped” as intended to do if stressed or if there is an electrical issue.

3. The landlord acknowledged the tenant’s media exposure and strongly denied it affecting the choice of rental unit for their daughter as their choice was solely guided by criteria they deemed unnegotiable: a suite which is not at ground level, and does not face the alley. The landlord testified that their original application to the Branch in mid-March 2017 for a rent increase was not solely in respect to the respondent’s rental unit but included others at the same rent.

4. The landlord testified the recently advertised rental unit did not meet their criteria for their daughter’s use and therefore is not suitable.

5. The landlord testified that #31 has not given legal notice to vacate and therefore consider. But regardless, the landlord testified #31 does not meet their requirements or their daughter’s needs and therefore would not be suitable.

6. The landlord testified they have other properties but none are available or are upcoming vacancies, or are otherwise in fixed term tenancies.

7. The landlord and the landlord’s daughter asserted the daughter intends to occupy the rental unit for their personal use. The landlord testified the subject rental unit is the only unit available to them that accommodates their daughter’s needs.

## **Analysis**

*The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)*

I find that pursuant to Section 71(2)(b) and (c) the landlord’s Notice to End was sufficiently given or served on the tenant for the purpose of the Act on March 31, 2017. Section 49 of the Act permits a landlord to end a tenancy if the rental unit will be occupied by the landlord or the landlord’s spouse or a close family member of either. In this matter the landlord’s evidence is that their 19 year old daughter is the close family member who will occupy the unit.

*Residential Tenancy Policy Guideline #2 - Good Faith Requirement when Ending a Tenancy*, in relevant part offers the following as guideline;

A claim of good faith requires honesty of intention with no ulterior motive.

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.

In this matter the tenant disputes the stated purpose of the landlord to accommodate their daughter: that the landlord will do as the landlord has stated in the Notice to End. The landlord testified as to the reasons for seeking the rental unit for occupation by their daughter and also provided their subject daughter whom testified they fully intend to occupy the rental unit for the period they attend university to completion. I find the evidence does not show the landlord has a different plan than to accommodate their daughter. On the available evidence and on balance of probabilities, I find the evidence sufficiently shows the landlord honestly intends to follow through and do as they have stated on their Notice to End.

I find Section 43 of the Act prescribes that a landlord may impose a rent increase to an amount agreed to by a tenant in writing and I accept the landlord sought this route with a view to avoiding an application to the Branch pursuant to the Act for an additional rent increase; and, once unsuccessful made such application. I do not accept the landlord's canvass of a voluntary rent increase is evidence that another purpose or motive exists.

I find that a power interruption to the rental unit, under the vague circumstances provided by both parties does not describe evidence of another purpose or motive.

I find the tenant aptly stated it is difficult to truly know the thoughts of the landlord. However, in this matter the tenant clearly wants me to accept the landlord's thoughts are known to the tenant, as seeking retribution toward them for not voluntarily agreeing to a rent increase, and them being outspoken about rent increases. I find the landlord's additional rent increase application before the Branch pursuant to the Act filed before mid-March 2017 and seeks a rent increase for a group of rental units including the applicant's unit. I find it does not make sense the tenant's original rejection of a rent increase would still remain a relevant motivating factor to the landlord for ending the tenancy. I find the remaining premise of retribution or punishment of the tenant as

another purpose or motive for ending the tenancy, while clear to the tenant's thinking, is not aptly supported by evidence from either party.

I find the tenant's remaining premise that the landlord has an obligation to exhaust all other avenues before seeking to end their tenancy, is not an obligation prescribed by the Act or Regulation. Regardless of which, the landlord provided that at this time there are no other units legally available to them meeting the criteria sought to accommodate their daughter. I do not accept this remaining premise describes a purpose or raises the spectre of a motive for ending the tenancy.

It must be noted that it is not enough for the tenant to insist on their version of facts as being the truth in this matter. I find the tenant's assertion the landlord has another purpose or motive in addition to the stated purpose is not supported by evidence from either party. Therefore, I find insufficient evidence to consider *motive* in my determination of this matter. I find the evidence supports the landlord in good faith truly intends to do as they said on the Notice to End, therefore I must uphold the landlord's Notice.

Section 55(1) of the Act provides that if a tenant's application to dispute a Notice to End Tenancy is dismissed or the landlord's notice is upheld I must grant the landlord an Order of Possession. In relevant part Section 55 states;

**Order of possession for the landlord**

**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.

I find that the landlord's Notice to End for Landlord's Use of Property with an effective date of May 31, 2017 complies with the Act and as a result of upholding the landlord's Notice I must grant the landlord an Order of Possession.

**I grant** the landlord an Order of Possession effective **May 31, 2017**. This Order must be served on the tenant. If necessary, this Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

**Conclusion**

The tenant's application is dismissed.

The landlord is given an Order of Possession pursuant to Section 55(1) of the Act.

**This Decision is final and binding.**

*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: May 17, 2017

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Residential Tenancy Branch