



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### 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 31, 2017
- b. 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 personally served on the Tenants on March 31, 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 on April 8, 2017. 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 tenants are entitled to an order cancelling the two month Notice to End Tenancy dated March 31, 2017?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

### Background and Evidence

The male enant moved into the rental unit approximately 20 years ago. The present rent is \$750 per month plus utilities. The tenant was unable to remember how much of s security deposit he paid. The landlord purchased the property a year ago.

Grounds for Termination:

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

- All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit

The landlord testified that the property has been sold under a contract for purchase and sale and that the sale is to complete on June 30, 2017.

The landlord served the 2 month Notice to End Tenancy on the tenant on March 31, 2017. He also served a document entitled TENANT OCCUPIED PROPERTY – BUYER NOTICE TO SELLER FOR VACANT POSSESSION which states the tenants have to vacate the rental property by March 30, 2017 a few days prior to the hearing. However, he provided the RTB with the Contract for Purchase and Sale but failed to provide this document to the Tenants.

Analysis:

Rule 3.15 and 3.16 of the Rules of Procedure provide as follows:

**3.15 Respondent's evidence provided in single package**

Where possible, copies of all of the respondent's available evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC office and served on the other party in a single complete package.

The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

In the event that evidence is not available when the respondent submits and serves their evidence, the arbitrator will apply Rule 3.17.

See also Rules 3.7 and 3.10.

**3.16 Respondent's proof of service**

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

It is not appropriate for an arbitrator to consider evidence presented to the Branch where it has not first been given to the other party in accordance with the Rules of Procedure. The landlord failed to provide the other party with a copy of the contract of purchase and sale and failed to provide the other party with the Notice that the Buyers have asked the seller to give Notice requiring the Tenant to vacate the rental property. I determined it was not appropriate to consider this document.

Further, the tenants produced a document that indicates the tenants are KB and SB. However, the Notice to End Tenancy failed to identify SB as a tenant. Instead it identified the tenants as BB and KB. Such a notice is insufficient as it failed to identify SB as a tenant.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated March 31, 2017 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I ordered the landlord pay to the Tenants the sum of \$100 for the cost of the filing fee such sum may be deducted from the security deposit.

It is impossible to tell from the admissible evidence at the hearing whether there are grounds to end the tenancy on the merits under section 49(5) which provides as follows:

49(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The parties are encouraged to seek legal assistance. I determined it was appropriate to give the landlord the right to serve a new Notice to End Tenancy in order for this matter to be determined on its merits. As a result I ordered that the landlord has liberty to serve another 2 month Notice to End Tenancy if it is appropriate. Both parties are encouraged to seek legal assistance regarding the type of evidence necessary in a situation such as this.

Conclusion:

I order that the 2 month Notice to End Tenancy be cancelled. I further ordered that the landlord pay to the Tenant the sum of \$100 such sum may be deducted from future rent.

**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: May 12, 2017

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Residential Tenancy Branch