



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      CNL

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

### Issues

*Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?*

### Background & Evidence

The rental unit is the upper floor of a residential house. The landlord operates a business out of the main floor and has recently been living in the garage on the main floor. The tenancy began June 26, 2013 and the current rent is \$1400.00 per month.

The landlord served the tenants with a 2 Month Notice on April 18, 2017. The Notice has an effective date of June 30, 2017. The ground for issuing the 2 Month Notice is the landlord intends to occupy the rental unit himself.

The tenants are disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenants testified that in various previous conversations with the landlord, the landlord has attempted to get them to agree to a rent increase up to \$2000.00 per month. The tenants testified that they believe the landlord will be performing upgrades to the house and re-rent the unit.

On behalf the landlord, the landlord's agent submits that the landlord has been having marital problems and is now separated from his wife. The landlord currently has no permanent residence and has been residing in the garage on the rental property. The garage does not have proper washroom or kitchen facilities. The landlord does not intend to re-rent the unit but intends to occupy the rental unit himself.

### Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

Further, 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

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.

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.

I find that the evidence supports that the landlord intends in good faith to occupy the rental unit himself. The tenants provided insufficient evidence of any ulterior motive on the part of the landlord other than the tenant's allegation that the landlord simply wants to re-rent the unit at a higher rate. The tenants provided insufficient evidence in support of their allegation of many verbal attempts by the landlord to increase the rent.

The tenants did not dispute that the landlord has currently been living in the garage which is not a suitable living accommodation. I accept the submissions of the landlord's agent and find the landlord does intend in good faith to utilize the rental unit for his own personal use.

The tenants' application to cancel the 2 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

If the landlord does not take the steps to utilize the rental unit for the reasons stated within a reasonable period after the effective date of the Notice, or the rental unit is not used for the stated purpose for at least six months, the tenant may make an application for compensation of an amount equivalent of double the monthly rent.

### Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on June 30, 2017**. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 26, 2017

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Residential Tenancy Branch