



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes                      CNL FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on April 20, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 28, 2017 (the "2 Month Notice"); and
- an order granting recovery of the filing fee paid to make the Application.

The Tenant attended the hearing on his own behalf. The Landlord I.H. also attended the hearing and was capably assisted by her legal counsel, R.H. All parties giving testimony provided a solemn affirmation.

The Tenant testified the Application package was served on the Landlord's agent, M.V., by registered mail on April 26, 2017. In support, the Tenant submitted a copy of a Canada Post registered mail receipt. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to have been received five days later. I find the Tenant's Application package is deemed to have been received on May 1, 2017.

The Tenant also submitted further documentary evidence. According to the Tenant, these documents were served on the Landlord by registered mail on May 15, 2017. In support, the Tenant submitted a Canada Post registered mail receipt. R.H. denied that the Landlord I.H. ever received it. Pursuant to sections 88 and 90 of the *Act*,

documents served by registered mail are deemed to have been received five days later. Even if I find the Tenant's additional documentary evidence was served on May 15, 2017, it would not be deemed to have been received until May 20, 2017, contrary to Rule of Procedure 3.14. Accordingly, I have not considered the Tenant's further documentary evidence in this Decision.

No additional issues were raised with respect to service and receipt of the above documents. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

### Preliminary and Procedural Matters

The Landlord I.H. is the owner of the rental property. She attended the hearing to provide testimony in support of the 2 Month Notice. The Landlord M.V. was her agent in Canada. During the hearing, the parties agreed to add the Landlord I.H. as a party to the proceeding. Accordingly, pursuant to section 64 of the Act, I amend the Tenant's Application to include the Landlord I.H. as a Respondent.

### Issue

1. Is the Tenant entitled to an order cancelling a notice to end tenancy for landlord's use of property?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The parties confirmed the tenancy began on or about June 1, 2015. Rent is due in the amount of \$1,000.00 per month. The Tenant paid a security deposit in the amount of \$500.00.

The Landlord I.H. provided testimony with respect to the reasons for issuing the 2 Month Notice. She indicated she was living overseas to study medicine and rented her property to the Tenant while she was away. Now that she has accomplished her goal, the Landlord I.H. wishes to live in the rental property with her 11-year-old son. During the hearing, the Landlord I.H. was adamant that she intends to live in the rental unit, and that the Tenant was aware of her desire to return to live in the rental unit when she completed her studies from the beginning of the tenancy. Accordingly, upon completion of her training, the Landlord I.H. sent the 2 Month Notice to the Tenant. R.H. submitted

that the 2 Month Notice was sent to the Tenant by registered mail, from Russia, on March 31, 2017. In addition, a copy was sent to M.V., her agent, to serve personally. The Tenant acknowledged receipt of the 2 Month Notice when it was hand-delivered by M.V. on April 12, 2017.

The Tenant sought an order cancelling the 2 Month Notice. He testified to his belief that a boyfriend of the Landlord I.H. intends to occupy the rental unit. Further, he suggested the dates as set out on the 2 Month Notice are incorrect and questioned why the 2 Month Notice was dated March 28, 2017, but was not received by him until April 12, 2017. In addition, the Tenant testified to his belief that the Landlord I.H. is returning to Russia on June 10, 2017. Finally, the Tenant submitted that he previously received notices to end tenancy, which were the subject of a previous dispute resolution hearing, and that the previous notices were evidence of bad faith on the part of the Landlords.

R.H. made closing submissions on behalf of the Landlord I.H. He stated that previous attempts by the Landlord to end the tenancy should be viewed as evidence of her intention to return to the property and maintain it as her primary residence, despite having negotiated a continuation of the tenancy until now. R.H. also submitted that any plans the Landlord I.H. has to travel to overseas do not detract from her intention for the rental property to become her primary residence. Finally, R.H. submitted that the Tenant's Application should be dismissed, and the Landlords should be granted an order of possession.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the *Act* permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. On careful review of the evidence and submissions of both parties, I find there is insufficient evidence before me to conclude the Landlord does not intend to occupy the rental property. I find the Tenant was at all times aware of the intention of the Landlord I.H. to return to the rental unit after completing her training, and that she now intends to reside in the rental property. Accordingly, the Tenant's Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. I have dismissed the Tenant's Application and conclude that the 2 Month Notice complied with section 52 of the *Act*. However, the only evidence with respect to service of the 2 Month Notice on the Tenant is his own admission that it was received when it was hand-delivered to him on April 12, 2017. Pursuant to section 49 of the *Act*, the earliest effective date possible for the 2 Month Notice is June 30, 2017. Accordingly, the order of possession will be effective on June 30, 2017, at 1:00 p.m. The parties are reminded of their respective rights and obligations under section 51 of the *Act*.

### Conclusion

The Tenant's Application is dismissed and the 2 Month Notice is upheld.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective on June 30, 2017, at 1:00 p.m. The order of possession may be filed in 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 31, 2017

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Residential Tenancy Branch