



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNL FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated June 6, 2017 to be effective August 31, 2017 was served by registered mail and that the tenant /applicant served the Application for Dispute Resolution by registered mail. The parties acknowledged receipt of the documents. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49; and
- b) To recover the filing fee for this application.

### **Preliminary Issue- Summons:**

On July 15, 2017, the applicant tenant requested a summons of conveyance documents between the Purchaser's and Vendor's lawyers so it can be determined if a written statement made by the Vendor/landlord is accurate. The arbitrator has the authority to issue a summons pursuant to section 76 of the Act. However, Residential Tenancy Policy Guideline gives some guidance on issuing summons. It notes the decision on whether or not to issue a summons is in the arbitrator's discretion and that they cannot be used for a fishing expedition. They might be used to obtain vital information that is not obtainable by other means or witnesses. I decline to issue the summons. I find the requested documents of the Offer of Purchase and Sale have been provided. They show the relevant dates of the original closing with an extension provided in an addendum. Therefore I find the information requested is in evidence and the summons is not necessary to obtain further vital information. The request of the applicant is denied.

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

Has the landlord proved on the balance of probabilities that all the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to

give the Notice to End Tenancy because the purchaser or a close family member intends in good faith to occupy the rent unit?

Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

On May 11, 2017 a previous hearing was held by conference call concerning a two month Notice to End Tenancy dated March 21, 2017. At that hearing, the arbitrator cancelled the Two Month notice dated March 21, 2017 because the landlord failed to prove that "all of the conditions for sale of the rental unit" had been satisfied. Certain pages of the Purchase and Sale document were not provided in evidence and there was insufficient evidence that all of the conditions had been satisfied. The arbitrator determined that the landlord had a good faith intention to sell the property but failed to establish that all of the conditions for sale had been satisfied so the Notice was cancelled.

On June 6, 2017 a new Two Month Notice to End Tenancy was issued for the same reasons, that is, that all the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give the Notice to End Tenancy because the purchaser or a close family member intends in good faith to occupy the rent unit. This new Notice is the subject of the hearing today. The tenants dispute the validity of the grounds for the Notice.

Both parties and witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 1, 2016 on a fixed term to January 31, 2017 and reverted to a month to month tenancy thereafter, rent is \$1348 a month and a security deposit of \$650 was paid. The landlord served a Notice to End Tenancy pursuant to section 49 (5) which provides that all the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing to give the Notice to End Tenancy because the purchaser or a close family member intends in good faith to occupy the rent unit.

The tenant disputed the Notice saying that the evidence shows that all the conditions had not been satisfied and they do not believe the purchaser in good faith intends to occupy the rental unit. The tenant pointed out that according to the Real Estate Board there should be signed waiver forms for conditions that were satisfied. In the Purchase and Sale Document in evidence, the various conditions are stroked out and initialled.

The buyer's realtor who attended the conference on request said that all the items listed as conditions were fully met and crossed off before submitting the offer to the seller. She said it is a common practice of realtors to list these conditions such as mortgage approval to protect the parties and the realtors for it shows these items were all considered by the parties and then they are stroked off and initialled to present an offer without conditions which is more attractive to a seller. This was an All Cash Offer and it was listed that way on the cover sheet of the Contract. The tenant said the cover sheet said it was not part of the Contract and, according to the Real Estate Board of BC, conditions need to be waived by the proper signed documents. The realtor pointed out again that there were no conditions as they had been all crossed off so no longer existed. She said the document was sent on March 14, 2017 with a letter stating that. The tenant continued to contend the legality of the Purchase and Sale document, pointing out that the extension, for example, was signed two days after the first closing date and there was a suspicious timing showing Eastern Daylight time. The realtor said the signing was done through a document signing service that has its offices out of province but it is done through information technology.

The tenant also states she does not believe the named purchaser intends in good faith to occupy the unit. She said their hydro account was shut off on May 31, 2017 and a new account opened in the name of a J. J. Y. She said they also received mail from an internet service for this person plus mail from a furniture company. They believe this is evidence that someone other than the buyer who is an L.N. intends to occupy the property.

The buyer's realtor said she is 100% sure her client intends to occupy the property. She lives at home with parents, she is a first time home buyer and is excited about her new home and had saved and obtained her mortgage approval in advance. The realtor said the buyer had friends in the complex and had enquired about their satisfaction with the complex before submitting an offer to purchase.

In summary, the tenant contended she objected to the Notice because of the many inconsistencies and contradictions in the contract such as the strike throughs and lack of official legal waivers. She believes there is sufficient evidence to question the validity of the transaction and the surprising change of service of hydro and internet and mail delivery to their address, all dealing with a J.J. Y. causes them to challenge the good faith of the buyer. The fact that the amendment extending the dates is not on what she terms the 'official forms' and completed in the 'official procedure' as set out in the Real Estate Board Rules causes the tenants to challenge the whole transaction.

The seller's lawyer submitted that both the landlord and new buyer were acting in good faith. In respect to the mail delivery, she said it was not logical that the buyer would have rented the unit before being able to take possession. She said she assumed there was another person moving into the building and they had given the wrong suite number by mistake. The tenant pointed out the letter of intent from the purchaser had been unsigned and/or undated. The lawyer said she had a signed and dated copy of the purchaser's intent to move into the unit but it was too late to provide it in evidence.

The landlord said she telephoned BC Hydro and they told her they were not sure what happened but they did get a call from the other person saying it was a mistake and they had given the wrong address. They were unable to provide more information as the landlord is not a resident of the building.

The buyer's realtor said the buyer works in the medical industry and she is prohibited from using telephones or cell phones during working hours so she could not attend the conference. She said the buyer is local and the fact that the authentication signing service has different times is a function of their location and computer service.

A great deal of evidence is submitted. Some (but not all) of the documents included with the evidence are:

- The Purchase and Sale Agreement and addendum
- An email from the Vendor's lawyer to the tenants certifying that it is a true copy and she participated in the negotiations of the addendum dated May 31, 2017.
- A letter from the Vendor's lawyer giving information that 8 offers were received with the successful one having a closing date of June 1, 2017 and a possession date of June 3, 2017 and stating the new owner's name was on the Notice to Vacate document sent by registered mail. The offer was accepted on March 14, 2017. They said the new owner did not agree to assume the existing tenancy for she wanted to occupy it herself.
- An email from the managing broker to the tenants stating she was attaching a copy of the Purchase and Sale contract.
- Emails between the parties, realtors and lawyers.
- A copy of the Two Month Notice to End Tenancy
- A copy of the previous Decision.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the section 49 Notice to End Tenancy. I find the good faith of the seller is res judicata (already heard and decided) as the previous Decision found good faith on the part of the seller.

I find the contract of Purchase and Sale is a valid document. Although the tenant pointed out alleged inconsistencies and contradictions within it, I find the buyer's realtor's explanations are credible and consistent with common real estate practice which appears to use internet providers to deliver documents to the parties and have them signed (e signed). I find the weight of the evidence is that all conditions were satisfied before the Notice to End Tenancy dated June 6, 2017 was served. I find the realtor's evidence credible that the strike throughs were done before the offer was presented so there were no conditions to be satisfied. I find her credibility is supported by the fact that all the strike throughs were initialled by the parties. I find her credibility is also supported by the fact that certain terms and conditions are on page 4 of the Contract of Purchase and Sale and these were not struck through as they pertain to terms based the possession date such as credit for any special levies and appliances in working order and are not conditions of the purchase and sale contemplated by section 49 of the Act.

In respect to the tenants' contention that the buyer does not in good faith intend to occupy the unit. They based this on a hydro service being changed and some mail they received, I find the landlord's witnesses more credible that the buyer does intend in good faith to occupy the unit. In respect to the mail and services discrepancies, I find it probable that a mistake was made as the hydro told the landlord as this is a multi unit building. I also note their service was resumed thereafter.

While this is disappointing to the tenants who obviously would prefer their tenancy to continue, I find the landlord in good faith served the Notice to End Tenancy dated June 6, 2017 as a buyer wants to occupy the property herself. I find insufficient evidence that the buyer is not acting in good faith. I find the witnesses testified convincingly as to her intent and motivation to move into the rental unit herself. As I pointed out to the tenants, section 51 of the Act provides compensation for tenants who subsequently find the unit was not used for the purpose stated on the Notice to End Tenancy.

For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on August 31, 2017 as stated in the Notice to End Tenancy dated June 6, 2017. Pursuant to section 55 of the Act, as the tenant's Application is dismissed, the landlord is issued an Order of Possession effective August 31, 2017.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed without recovery of the filing fee due to lack of success. The tenancy is at an end on August 31, 2017. An Order of Possession is issued to the landlord effective August 31, 2017.

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: July 26, 2017

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Residential Tenancy Branch