



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF, OLC

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlords were served with the notice of hearing package via Canada Post Registered Mail on June 8, 2017. The landlords confirmed receipt of this package. The tenant also stated that the submitted documentary evidence was served to the landlords via Canada Post Registered Mail on July 12, 2017. The landlords also confirmed receipt of this package as claimed. The landlords provided affirmed testimony that the tenant was served with the first documentary evidence package in person on June 9, 2017 which the tenant confirmed receiving. The landlords also stated that the second documentary evidence package was served via regular mail to the landlords on July 22, 2017. The tenant states that he is not in possession of this package, but has received a package at his parents' house as his mail is being re-directed by Canada Post. The tenant is unable to determine what the received package is. The landlord is unable to provide sufficient evidence to support the claim of service regarding the second documentary evidence package.

I accept the affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence, except the landlord's second document package. On this second package, I find that as the tenant cannot confirm receipt of or the contents of the package and the landlord is unable to provide sufficient evidence of service that this second package is

excluded from consideration for this hearing. It was explained to both parties that the landlord may present the excluded evidence as part of their verbal testimony if necessary.

At the outset the tenant clarified that he was not seeking any order(s) for the landlord to comply with the Act, regulations or tenancy agreement (OLC). As such, the hearing shall proceed on the two remaining issue(s) filed.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

Is the tenant entitled to recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that the 2 Month Notice dated May 31, 2017 provides an effective end of tenancy date of July 31, 2017 and two reason(s) listed as:

*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse).*

*All the conditions for the 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 tenant argues that the 2 Month Notice is invalid for two reasons. The tenant's first reason is that the landlord has served the 2 Month Notice by placing it on his kitchen table and he received it on June 1, 2017 and as such the 2 Month Notices' effective end of tenancy date is incorrect and voids the notice. The tenant's second reason is that the landlord has selected two conflicting and contradictory reason(s) on the notice voiding the 2 Month Notice.

Both parties confirmed that the landlord served the tenant with the 2 Month Notice dated May 31, 2017 by placing it on the tenant's kitchen table. The tenant confirmed receipt of this package on June 1, 2017. The landlord relies upon a signed statement by their realtor who confirmed that on May 31, 2017 the 2 Month Notice was left on the kitchen

table. The landlord argued that as such the tenant was served on May 31, 2017 by placing it in a conspicuous place.

The landlord made submissions that the reason for the 2 Month Notice was clarified with the tenant as part of ongoing communications. The landlord stated that prior to serving the 2 Month Notice on May 31, 2017 verbal discussions were made with the tenant explaining that they were waiting for the result of a prospective purchase of the rental unit. The landlord also states that upon successful completion of the purchase of the property an email was exchanged with the tenant where the tenant was again informed of "We signed the papers last night and the condo is now sold."

### Analysis

Section 49(5) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where all of the conditions of the sale have been satisfied and the purchaser has asked the landlord in writing to give notice to end the tenancy as the purchaser or a close family member intends to occupy the rental unit.

In this case, the tenant is not disputing the good faith requirement of the 2 Month Notice, but instead seeks to cancel it on the basis that the landlord has not correctly filled out the RTB-32 form. The tenant stated that the landlord did not serve him until he received the 2 Month Notice on June 1, 2017 when he discovered the notice on his kitchen table. The tenant had referenced section 88 of the Act. It states in part, that all documents that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways. In this case, the landlord left the 2 Month Notice in a conspicuous place (on the tenant's kitchen table) instead of personally serving it. I find that this form of service does not constitute as personal service and falls under section 88 (g) where it was left at a conspicuous place (the kitchen table) at the address which the person resides. Pursuant to section 90 (c) of the Act, I find that service in this manner is deemed received by the tenant 3 days later on June 3, 2017. Section 53 (3) of the Act states in part, if the effective date stated in the notice is any day other than the day before the day in the month...that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month...that rent is payable under the tenancy agreement. In this case, the effective end of tenancy date is corrected from July 31, 2017 to August 31, 2017. As such, the tenant's first reason to set aside the 2 Month Notice is dismissed.

On the tenant's second reason to set aside the 2 Month Notice the tenant argued that the landlords have selected two conflicting and contradictory reason for the notice. The first being that the landlord or a close family member of the landlord shall occupy the

rental unit. The second reason selected on the 2 Month Notice is “All of the conditions for the 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.” Both parties confirmed that both selections were made on the notice and served to the tenant. The landlord was unable to provide any clarity on why they chose two conflicting and contradictory reason(s). However, the landlord provided undisputed affirmed evidence that prior to serving the tenant with the notice, a verbal reason was given to the tenant that they were awaiting the result of “subject removal” for the sale purchase of the property. The landlords referenced the letter provided by the landlord’s realtor in support of this. The landlords also referenced page 11 of the tenant’s documentary evidence, an email between the landlords and the tenant dated June 1, 2017 confirming to the tenant the reason for the 2 Month Notice in that “We signed the papers last night and the condo is now sold.” Based upon the above, I find that there could not have been any confusion on the tenant’s part that the reason for the 2 Month Notice was for the purchaser and seller completing the sale of the property and that the new owner or a close family member intended in good faith to occupy the property. As such, the tenant’s second reason to set aside the 2 Month Notice is dismissed.

### Conclusion

The tenant’s application is dismissed.

The landlord is granted an order of possession effective on the corrected date of the 2 Month Notice for August 31, 2017.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: August 03, 2017

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Residential Tenancy Branch