



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL MNDC OLC FF

### Introduction

This hearing dealt with the tenants' 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 ("2 Month Notice") pursuant to section 46; a monetary order for compensation for damage or loss under the *Act* pursuant to section 67; an order requiring the landlord to comply with the *Act* pursuant to section 62; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing (1 of 2 tenants on behalf of both and 1 landlord) and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's 2 Month Notice on July 30, 2017 and the landlord's response evidentiary materials. The landlord confirmed receipt of the tenant's Application for Dispute Resolution. The tenants confirmed at this hearing that they did not submit any evidence.

### Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy be cancelled or is the landlord entitled to an Order of Possession?

Are the tenants entitled to a monetary order for compensation for damage or loss?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*?

Are the tenants required to recover the filing fee for this application from the landlord?

### Background and Evidence

The tenants applied to cancel the landlord's notice to end tenancy. The tenant who attended this hearing ("Tenant N") testified that the landlord had first issued a notice to end tenancy for landlord's use in July 2017. Shortly after the issuance of that notice, the landlord contacted Tenant L and told him to disregard that first notice. The landlord

testified that the reason he did so was because he realized he had not yet met all the conditions to end a tenancy based on a 2 Month Notice. The landlord testified that, prior to the issuance of the first notice to end tenancy the tenants had been made aware that the residential premises were for sale.

The tenants submitted that the landlord was unsure of the dates that he issued the notices (a first 2 Month Notice and a second 2 Month Notice) and that the landlord has been both confusing and not truthful with them. Tenant M submitted that, since the landlord's first notice to end tenancy was deficient and did not meet the grounds to end tenancy that the landlord should not be allowed to correct the error by issuing yet another notice to end tenancy for the same grounds. Tenant M also submitted that the landlord provided no notice prior to viewings of the unit while the property was up for sale.

The landlord testified that he erred in prematurely issuing a notice to end tenancy. He testified that he rectified this error by contacting the tenants as soon as possible and then, when he had met all of the conditions for a 2 Month Notice, he issued a new notice that complies with the Act. The landlord referred to the document he submitted for evidence titled, "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession". On that document, the landlord is listed as the seller; the sale date is listed as July 19, 2017 and the date that the tenants were required to vacate the premises is September 30, 2017. The document is signed by a party described as "Buyer".

The landlord testified that he did not anticipate this dispute as the tenants had already relied on the 2 Month Notice to End the Tenancy by using their months' rent equivalent to cover the cost of September 2017 rent. The tenants acknowledged they did not pay rent in September or October but testified that the landlord has an October 2017 rent cheque that he has not cashed.

The landlord provided copies of text messages to show that he communicated with the tenants as often as possible both by text message and in person.

### Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 2 Month Notice to End Tenancy on July 30, 2017, the landlord claimed that; *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 closet family member intends in good faith to occupy the rental unit.*

The landlord relied on his documentary submission signed by the buyer of the property requesting that the landlord provide 2 Month Notice to the tenants. The tenants were provided with a copy of this document along with the second 2 Month Notice issued by the landlord on July 30, 2017. I accept the landlord's testimony supported by the documentary evidence he submitted to show that the landlord has sold the property and that the landlord has been asked by the buyer to provide 2 Months' Notice to End Tenancy to the tenants.

I find that the evidence at this hearing as well as my assessment of the credibility of both parties and their testimony at this hearing supports my finding that the landlord has acted in good faith in his withdrawal and re-issuance of a second 2 Month Notice to End Tenancy for Landlord's Use. I find that his reasons for withdrawing the initial notice are reasonable and that he has still issued the 2 Month Notice (the second version) in compliance with the requirements of the Act. The time period for the tenants to vacate the rental unit was correctly calculated. Based on my finding that the landlord has sufficiently proved the validity of the 2 Month Notice to End Tenancy issued on July 30, 2017, I find that the landlord is entitled to an order of Possession in accordance with section 55(1) of the Act.

Section 55 of the Act reads,

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's notice to end tenancy complies with section 52 of the Act. I dismiss the tenant's application to cancel the notice to end tenancy. Therefore, given that the effective date for the end of this tenancy has passed, I find that the landlord is entitled to a 2 day Order of Possession.

The tenant confirmed that her application to have the landlord comply with the Act was

directly related to her application to cancel the landlord's notice to end the tenancy. That application is therefore also dismissed.

The tenants sought a monetary order in the amount of \$100.00 for the recovery of the filing fee. As the tenants have not been successful in this application, I find that the tenant is not entitled to recover her filing fee. I dismiss the application to recover the filing fee by the tenant.

### Conclusion

I dismiss the tenants' application in its entirety, including the application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use. The tenancy shall end.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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: October 10, 2017

---

Residential Tenancy Branch