



# 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 for cancellation a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49 of the *Residential Tenancy Act* ("the *Act*").

The landlord's representative (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that they served the landlord with the Tenant's Application for Dispute Resolution (Application) by way of registered mail on September 08, 2017. The landlord confirmed that they received the Application. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

The landlord testified that they served the tenant with their evidentiary package by way of registered mail on October 12, 2017. The tenant confirmed that they received the landlord's evidence. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

The Tenant testified that they received the Two Month Notice, which was served to him in person on August 27, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the Two Month Notice.

The tenant testified that they did not submit any evidence.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the Two Month Notice?

Background and Evidence

The landlord testified that this tenancy commenced on December 01, 2011, with a monthly rent of \$4,700.00, due on the first day of the month. The landlord testified that they currently retain a security deposit in the amount of \$2,350.00. The tenant testified that there was a pet deposit as well but neither the landlord nor the tenant was exactly sure of how much the pet deposit was.

A copy of the landlord's August 27, 2017, Two Month Notice was entered into evidence. In the Two Month Notice, requiring the tenant to end this tenancy by November 30, 2017, the landlord cited the following reason:

*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).*

The landlord entered into written evidence:

- A copy of an e-mail exchange between the landlord and the tenant in July of 2014 regarding the landlord informing the tenant of their decision to buy a house in another city and that they will not require the tenant to end their tenancy.
- Copies of documents, such as a Home Insurance Confirmation and a letter from a lawyer, concerning the purchase of a property in another city in 2014.
- A copy of a text message exchange between the landlord and the tenant, from August of 2017, regarding the landlords moving furniture into a storage area at the rental unit and the landlord's intention to "take back part of the upper level suite as our own residence."
- A copy of a one way ticket for a flight from the city that the landlords bought a house in to the city that the rental unit is located.

The landlord testified that they intend on moving into the entire rental unit. The landlord testified that they have already moved furniture into the storage area of the rental unit.

The landlord testified that they tried to make a deal with the tenant to take back the upper portion of the rental unit and for the tenant to remain in the lower part of the rental unit at a reduced rent for a few months after the tenant's lease ended.

The landlord testified that they were not able to come to an agreement with the tenant about what the appropriate reduced rent would be for the lower portion of the rental unit and decided that they would have to take back the entire rental unit as of the end date of the tenant's lease on November 30, 2017. The landlord testified that her brother (the son of the owner of the house) is moving back to the city that the rental unit is located in and will also be living in the rental unit.

The tenant testified that the landlord issued an informal notice to end tenancy to the tenant in 2014 but that the landlord changed their mind when the tenant informed them of compensation owed to the tenant when a landlord wants to take back a rental unit for their own use. The tenant testified that they need the whole house for their work equipment and that the compensation that the landlord offered was not enough to give up a portion of the rental unit. The tenant stated, in their details of the dispute on the Application, that the landlords told him that they only wanted to use a small portion of the house and rent out the rest of the house to new tenants.

The landlord testified that her father bought a house in another city for his son in 2014 and that the landlord's plans changed based on that purchase. The landlord stated, in an explanation of their evidence package, that they never told the tenant that they were only going to use a small portion of the house and rent out the rest of the house to new tenants. The landlord testified that they were offering for the tenant to stay a few months longer while the landlord's mother lived in the upper portion and the landlord fixed the property. The landlord testified that when an agreement could not be reached with the tenant, they decided to take back the whole house.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit.

Section 49 of the *Act* provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notice was issued to the tenant in good faith and truly intends on doing what they

said they would do on the Two Month Notice. As the tenant disputed this notice on September 05, 2017, and since I have found that the Two Month Notice was served to the tenant on August 27, 2017, I find the tenant has applied to dispute the Two Month Notice within the time frame provided by section 49 of the *Act*.

Residential Tenancy Policy Guideline #2 defines “good faith” as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. The Guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

I have reviewed all documentary evidence and the testimony of both parties. Based on the above and a balance of probabilities, I find that the landlord has proven that they intend to use the rental unit in a manner allowed by section 49 of the *Act*. I further find that the landlord issued the Two Month Notice to the tenant in good faith.

I find that the landlord has proven that they bought a house in 2014, in another city, and that there was an actual reason for the landlord deciding to not end the tenancy at that time other than compensation to the tenant. I find that, even if there was another reason for the landlord changing their mind, the tenant has not proven that those reasons have any impact on the Two Month Notice served in 2017. I find that the landlord has provided evidence, in the form of text messages exchanged between the landlord and the tenant in 2017 that the landlord was trying to arrange to only take back the upper portion of the home.

I am satisfied that the landlord was intending on occupying at least a portion of the home before issuing the Two Month Notice to the tenant. I accept that the landlord has moved their furniture into a storage area of the rental unit which supports the landlord's stated intentions of occupying the rental unit. For the above reasons, the tenant's application to set aside the Two Month Notice is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession.

For the above reason, I grant an Order of Possession to the landlord effective on November 30, 2017

### Conclusion

I dismiss the tenant's application to cancel the landlord's Two Month Notice.

I grant an Order of Possession to the landlord **to take effect by 1:00 p.m. on November 30, 2017, after service of this Order** on the tenant. Should the tenant or anyone on the premises 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 31, 2017

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Residential Tenancy Branch