



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MT CNL LRE MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 66; cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49; a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties and their selected representatives attended this hearing, gave testimony and presented their submissions. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution. Both parties confirmed receipt of the other's evidentiary submissions for this hearing.

### Preliminary Matter

Within his application for dispute resolution, the tenant applied for more time to make the application. When a 2 Month Notice is issued to a tenant, the tenant has 15 days after receipt to apply to the Residential Tenancy Branch to dispute the notice. In this case, the landlord testified that he served the 2 Month Notice by registered mail on September 29, 2017. The landlord provided a receipt with tracking information for the registered mailing. The tracking information from Canada Post indicated that the package was picked up on October 19, 2017.

A registered mail package is deemed served 5 days after its mailing, according to the deeming provision of the *Act* (section 90). However, in this case, the documentary evidence shows that the tenant picked up the Notice to End Tenancy on October 19, 2017. An arbitrator may find that the date of service is the date of receipt through the Canada Post tracking information, however an arbitrator might also find that the receiving party intentionally delayed pick up of a package to extend their timeline to respond.

The tenant testified that he was in hospital when the Notice to End Tenancy was sent and therefore he was unable to pick it up. He provided documents showing that he had tests at the hospital on one date and that he attended emergency on another date. The tenant also testified that he was too sick and weak to attend to get his mail when he was not in hospital.

In all of these circumstances, I find that the tenant is entitled to have his matter heard and that he provided a reasonable explanation to receive additional time. I rely heavily on the pick-up date provided by Canada Post by October 19, 2017: Based on this date, the tenant has applied to dispute this notice in a manner that meets his obligations under the Act.

#### Issue(s) to be Decided

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

Is the tenant entitled to a monetary order in compensation from the landlord?

Is the tenant entitled to an order to set conditions on the landlord's right to enter the rental unit?

#### Background and Evidence

This tenancy began 5 years ago, according to the testimony of both parties. The tenant testified that, within the past year, the landlord has made 2 previous applications to end this tenancy. Those applications were dismissed. With respect to this application, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use on the grounds that; the landlord has all necessary permits and approvals required by law to demolish, renovate or repair in a manner that requires the unit to be vacant.

The landlord (PH) testified that this has become a complicated matter with the tenant. He testified that previous notices were issued and previous hearings determined that the landlord had not sufficiently served the documents or provided all of the necessary materials for hearing. He testified that the repairs to the rental premises have been underway for some time. He testified that, as a result of a large sewage leak that resulted in damage to the first floor and the parkade of the residential premises, all of the tenants on the first floor of the residence have vacated their rental units. He testified that the only person who remains residing in the rental unit first floor is this tenant.

The landlord testified that initial emergency repairs were done to the residential premises after the leak. Then, he testified that, after the insurance company made decisions on the extent of the restoration to be done to the residential premises, the large scale work began. He testified that the work began 6 months ago. He testified to the details of the work included bio-washing the entirety of the first floor as well as repair of a subfloor and complete investigation and reconditioning of the first floor hallways.

The tenant acknowledged that he is the only resident remaining on the first floor. He testified that he is willing to stay while the work carries on – he says that his rental unit is still functional and that the landlords are exaggerating the seriousness of the situation. He just wants the landlord to “stop harassing him”. He seeks a monetary award for loss of use of his unit and to compensate him for the ongoing frustration at the landlord’s efforts to get rid of him.

The landlord submitted documentary evidence for the hearing. These included letters describing the scope of the work by the restoration company. At the end of the restoration company’s letter, they state that it is not safe for anyone to reside in the area that is being worked on because of the existence of sewage, mold and other harmful toxins. A letter submitted by the landlord from the insurance company indicates, “it is not safe for the tenants to live in the affected units while the raised subfloor framing is exposed and cleaned...no way to work around tenants living in the unit...” Photographic evidence of the first floor shows a building ripped near its studs. The tenant acknowledged that the photographic evidence reflects the current state of the first floor.

### Analysis

The tenant made an application pursuant to section 49(8) of the *Act* after receiving the 2 Month Notice to End Tenancy for Landlord’s Use of Property. When a tenant applies to cancel a notice to end tenancy, the landlord bears the burden of proof to show that the Notice to End Tenancy is valid and justified.

In this case, the landlord sought an Order of Possession based on the 2 Month Notice claiming that he has approval/permits for restoration or repair that require the unit to be vacant. The landlord has properly issued a valid 2 Month Notice to the tenant. The landlord justified the Notice to End Tenancy with evidence of unliveable conditions at the residential premises. The tenant did not dispute that the photographs of hallways and stairwells stripped down to the studs represented the state of the rental unit. The tenant did not dispute that he was the only remaining tenant on the first floor. The landlord provided notices from both the restoration company and the insurance company to indicate that tenants cannot live in their rental units while these repairs are ongoing.

The landlord testified, supported by his documentary evidence, that he cannot provide a timeline for the work on the first floor at this time because there is investigation of the inner portions of the residence as the work continues. There has been investigation regarding asbestos and other issues within the residence. I find the landlord has satisfied the requirements of the *Act* to support his 2 Month Notice to End Tenancy. I dismiss the tenant’s application to cancel the notice. In accordance with section 55(1), I issue the landlord an immediate Order of Possession.

The tenant applied to limit the landlord’s access to his unit. This application is moot as the tenant must vacate the rental unit.

The tenant also applied seeking \$9000.00 for loss of use of his unit. The tenant cannot both claim that his unit is entirely liveable and then claim for a monetary award because he cannot reside in the conditions of the rental unit. Therefore, I dismiss the tenant's claim for a monetary award.

As the tenant was unsuccessful in his application, I dismiss his claim for the filing fee.

Conclusion

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: January 18, 2018

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Residential Tenancy Branch