



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL ERP PSF LRE DRI RP OLC RR FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on October 31, 2017, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on December 4, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated November 28, 2017 (the "Two Month Notice");
- an order that the Landlord make emergency repairs for health or safety reasons;
- an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order setting or suspending conditions on the Landlord's right to enter the rental unit;
- an order relating to a rent increase that is alleged to be above the amount allowed by law;
- an order that the Landlord make repairs to the unit, site or property;
- an order that the Landlord comply with the *Act*, regulation, and or the tenancy agreement;
- an order that rent be reduced for repairs, services or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf and was accompanied by D.P., her spouse. The Landlord attended the hearing on his own behalf and was assisted by C.S., who provided translation services. All parties giving testimony provided a solemn affirmation.

The Tenant testified the Application package and the Amendment to an Application for Dispute Resolution were each served on the Landlord in person. The Landlord

acknowledged receipt of these documents. In addition, the Landlord testified that documentary evidence was served on the Tenant in person. The Tenant acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address during this hearing was whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request to cancel the Two Month Notice and to recover the filing fee paid to make the Application. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

### Issues to be Decided

1. Is the Tenant entitled to an order cancelling a Two Month Notice?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties agreed the tenancy began on February 1, 2016. Currently, rent is due in the amount of \$1,550.00 per month. The Tenant paid a security deposit of \$725.00, which the Landlord holds.

The Two Month Notice was issued on the basis that the Landlord wishes to occupy the rental unit. A copy of the Two Month Notice was submitted into evidence by the Tenant, receipt of which on November 30, 2017, was acknowledged. According to C.S., the Landlord's real estate agent, the Landlord purchased the rental property intending to move into it at a later date. Now that the Landlord's children are attending a school nearby, the Landlord intends to sell the townhome they live in currently and move into the rental property. Further, a written statement submitted into evidence by the Landlord advised, in part:

*As the owner of the property...I want to make it explicitly clear that I want to occupy this property with my family by February 2018. Our intention when we bought this property was to occupy this property when our kids grew older and at no time we intended to use this as a rental/investment property for a long time.*

[Reproduced as written.]

In reply, Z.B. testified that she has three children who attend a nearby school. Further, she testified she has been looking for alternative accommodation but has been unable to find anything appropriate. She fears being homeless if the Two Month Notice is upheld.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49 of the *Act* permits a landlord to end a tenancy when the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Landlord issued the Two Month Notice on this basis.

In this case, I find there is insufficient evidence before me to conclude the Landlord does not intend to do what was indicated on the Two Month Notice. The evidence provided by the Landlord confirms the Landlord's family intends to sell their current home and occupy the rental unit. While the Tenant testified this may cause some inconvenience and hardship, these are not bases for cancelling the Two Month Notice. Accordingly, I find the Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to the landlord. A copy of the Two Month Notice was provided by the Tenant. I find the Two Month Notice complied with section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, the Landlord is entitled to an order of possession, which will be effective on January 31, 2018, the effective date indicated on the Two Month Notice.

### Conclusion

Subject to the exercise of my discretion, described under Preliminary and *Procedural Matters*, above, I find that the Tenant's Application is dismissed. Therefore, by operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective on January 31, 2017, at 1:00 p.m. The order of possession may be filed in 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 2, 2018

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Residential Tenancy Branch