



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), and recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s spouse, who is also an occupant of the rental unit, the Landlord, and the agent for the Landlord (the “Agent”). All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling the Two Month Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to section 55(1) of the *Act*?

### Background and Evidence

The Agent testified that the Landlord's daughter and son-in-law currently resides with the Landlord in the upstairs unit of the home. The Agent stated that the Landlord's daughter and son-in-law are looking to start a family of their own and need somewhere to live as the single bedroom they reside in is not suitable for a family. The Agent stated that as a result, a Two Month Notice was served on the Tenant so that the Landlord's daughter and son-in-law can reside in the unit. In support of this testimony the Landlord provided a written statement from their daughter and son-in-law stating that they will be moving into the basement suite.

The Two Month Notice in the documentary evidence before me, dated December 20, 2017, has an effective vacancy date of February 28, 2018, and states that the reason for ending the tenancy is because the rental unit will be occupied by the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). The Two Month Notice indicates that it was personally served on the Tenant on December 21, 2017, and the Tenant confirmed receipt of the Two Month Notice on that date.

The Tenant testified that they believe that the Two Month Notice has actually been issued because they did not comply with an unlawful \$100.00 rent increase. They stated that they think it is suspicious that the Landlord's daughter and son-in-law were building their own home and now need to move into the basement suite where the Tenant and his spouse reside. The Tenant also pointed out that there is an even larger basement suite in the home and questioned why the occupant of that unit has not been given a Two Month Notice instead, as the Tenant believed the other larger unit would be more suitable for a growing family.

In response to the Tenant's testimony the Agent confirmed that the Landlord's daughter and son-in-law have been temporarily residing in one of the bedrooms in the Landlord's home while they build a home of their own; however, due to unforeseen financial circumstances, they have had to place their home on the market and need a more permanent and suitable place to live. The Agent also stated that the Two Month Notice has nothing to do with rent or this alleged unlawful rent increase as the Landlord's daughter and son-in-law will not be paying rent for the unit. Further to this the Agent stated that it is the Landlord's right to choose how to use their space and that the other occupant has not been served a Two Month Notice as they have been a tenant of the Landlord for over 20 years.

### Analysis

Section 49 of the *Act* states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49 of the *Act* also defines a close family member as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

Although the Tenant alleged that the Two Month Notice was served because they failed to comply with an unlawful rent increase, they did not submit any documentary or corroborative evidence to support this testimony and the Agent and Landlord denied that this was the case. Although the Tenant believes that a different unit in the home would be more suitable for the Landlord's daughter and son-in-law, there is no requirement under the *Act* for the Landlord to choose or demonstrate that they have chosen, the unit to which the Two Month Notice applies based upon any particular criteria. Section 49 of the *Act* allows the Landlord to end the tenancy as long as the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Based on the documentary evidence and testimony before me, and keeping in mind that the burden of proof in this matter is on a balance of probabilities, the Landlord has satisfied me that either they or their close family members intend in good faith to reside in the rental unit. As a result, I am satisfied that the Landlord had cause pursuant to section 49 of the *Act* to serve the Two month Notice and to end the tenancy. As a result, I dismiss the Tenant's Application without leave to reapply.

I also find that the Two Month Notice issued by the Landlord complies with section 52 of the *Act* as it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the Notice and the grounds for ending the tenancy, and is in the approved form. Given the above, and pursuant to section 55 of the *Act*, the Landlord is therefore entitled to an Order of Possession effective at 1:00 P.M. on the effective date of the Two Month Notice, February 28, 2018.

As the tenant was unsuccessful in their Application, I decline to grant them recovery of the filing fee.

In order to provide clarity for both parties and in the hopes of preventing future disputes, the parties should be aware that pursuant to section 51 of the *Act*, a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the

landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The Tenant may withhold this amount from the last month's rent or otherwise recover this amount from the Landlord if rent for the last month has already been paid. Further to this, in addition to the one month's compensation due to the tenant under section 51(1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

### Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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: February 2, 2018

---

Residential Tenancy Branch