



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, CNL, DRI, ERP, LAT, LRE, MNDC, OLC, RP, RR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”) seeking the following:

- Cancellation of the One Month Notice to End Tenancy for Cause (the “One Month Notice”);
- Cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”);
- To dispute a rent increase;
- An Order for the Landlord to make emergency repairs for health and safety reasons;
- Authorization to change the locks of the rental unit;
- An Order suspending or setting conditions on the Landlord’s right to enter the rental unit;
- Compensation from the Landlord for loss or other money owed;
- An Order for the Landlord to comply with the *Act*, regulation, or tenancy agreement;
- An Order for the Landlord to make repairs to the rental unit which have already been requested by the Tenant in writing;
- A rent reduction for repairs, or services or facilities agreed upon but not provided.

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, one of the Landlords, and legal counsel for the Landlords, all of whom provided affirmed testimony. The parties were provided 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 this matter in accordance with the Rules of Procedure; However, I refer only to the relevant facts and issues in this decision.

At the request of the Landlords, a copy of the decision and any orders issued in favor of the Landlords will be faxed to their legal counsel at the fax number provided in the hearing. At the

request of the Tenant, a copy of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address provided in their Application.

### Preliminary Matters

#### **Evidence**

The Landlord acknowledged receiving the Notice of Hearing, Application, each Amendment to an Application for Dispute Resolution filed by the Tenant and all of the Tenant's evidence. Although the Tenant acknowledged receiving the evidence package from the Landlord, a copy of this evidence was not before me for consideration. The Tenant acknowledged receiving this evidence and legal counsel for the Landlords testified that it was submitted to the Residential Tenancy Branch (the "Branch") via a Service BC location on January 17, 2018. Based on the above, and as the Tenant raised no objections, I advised the legal counsel for the Landlords to submit a copy of this evidence to the Branch, by fax, no later than 4:30 P.M. on the date of the hearing.

A copy of the Landlords' evidence was received within the timeline noted above, which I accepted for consideration in this matter.

#### **Matters Dismissed with Leave to Reapply**

The Tenant, who is the Applicant, submitted multiple claims in relation to multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application for Dispute Resolution must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims made by the Tenant relate to the cancellation of the One Month Notice and the Two Month Notice and I note that the parties were given a priority hearing date in order to address the question of the validity of these notices to end tenancy.

I find that the other claims made by the Tenant are not sufficiently related to either of the notices to end tenancy listed above and the facts of those claims are not germane to the question of whether there is evidence to establish the grounds for ending the tenancy as set out in either the One Month Notice or the Two Month Notice. As a result, I exercise my discretion to dismiss, with leave to reapply, the claims from the Tenant seeking:

- To dispute a rent increase;
- An Order for the Landlord to make emergency repairs for health and safety reasons;
- Authorization to change the locks of the rental unit;
- An Order suspending or setting conditions on the Landlord's right to enter the rental unit;
- Compensation from the Landlord for loss or other money owed;
- An Order for the Landlord to comply with the *Act*, regulation, or tenancy agreement;

- An Order for the Landlord to make repairs to the rental unit which have already been requested in writing;
- A rent reduction for repairs, or services or facilities agreed upon but not provided.

While I grant the Tenant leave to re-apply for the above claims, this does not extend any applicable time limits under the Act.

### **Settlement**

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

### **Issue(s) to be Decided**

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

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

If the Tenant is unsuccessful cancelling either the Two Month Notice or the One Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

### **Background and Evidence**

Legal counsel for the Landlords stated that the Landlords reside in the upstairs portion of the home and that there are two rental suites in the basement, one of which is occupied by the Tenant. Legal counsel for the Landlords stated that the Landlords no longer wish to rent out the unit occupied by the Tenant and instead wish to occupy and have exclusive use and possession of the rental unit for their own purposes. As a result, a Two Month Notice was personally served on the Tenant.

The Two Month Notice in the documentary evidence before me is dated November 29, 2017, has an effective vacancy date of January 31, 2018, and gives the following reason for ending the tenancy:

- The rental unit will be occupied by the landlord or a close family member (parent, spouse or child; or the parent, spouse or child of that individual’s spouse).

The Tenant confirmed receipt of the Two Month Notice on November 30, 2017, and acknowledged being told by one of the Landlord’s that they intend to keep the suite for their own use and the use of their guests. When asked, the Tenant acknowledged that they did not have any evidence or suspicions of bad faith in relation to the Two Month Notice. Despite the foregoing, the Tenant argued that the Two Month Notice should be cancelled as the Landlords

have not provided him with either documentation from close family members of the Landlords stating that they will be occupying the suite or any sort of documentary assurance that the Landlords will comply with the stated purpose for ending the tenancy for at least the period provided for under section 51 of the *Act*.

Both parties agreed that no rent has been paid to the Landlord for either January or February of 2018, and legal counsel for the Landlord stated that the Tenant was provided with free rent for January 2018 pursuant to section 51 of the *Act*.

### 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. Black's Law Dictionary also states that the term "occupy" means to hold in possession or to hold or keep for use.

Legal counsel for the Landlords submitted that the Landlords intend in good faith to occupy the rental unit themselves or use it for their own purposes. Based on this testimony, I find that there is no requirement for the Landlords to demonstrate that their close family members intend to occupy the unit. I also note that the Tenant himself acknowledged in the hearing that he did not have any evidence or suspicions of bad faith in relation to the ground listed for ending the tenancy in the Two Month Notice.

Based on the above, and keeping in mind that the burden of proof in this matter is on a balance of probabilities, the Landlords have satisfied me that they intend in good faith to occupy the rental unit. As a result, I am satisfied that the Landlords had cause pursuant to section 49 of the *Act* to serve the Two month Notice and to end the tenancy. I therefore dismiss the Tenant's Application seeking to cancel the Two Month Notice without leave to reapply. I also find that the Two Month Notice issued by the Landlords complies with section 52 of the *Act* and pursuant to section 55 of the *Act*, the Landlords are therefore entitled to an Order of Possession. As the effective date of the Two Month Notice, January 31, 2018, has passed and the Tenant has not paid rent for the current month, the Order of Possession will be effective two days after service of the Order on the Tenant.

Although the Tenant also applied to cancel a One Month Notice, as I have already found above that the Tenancy is ended as a result of the Two Month Notice, it is unnecessary to make any findings of fact or law in relation to the One Month Notice.

### Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are 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 9, 2018

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Residential Tenancy Branch