



# 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 pursuant to section 49 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice).

Both parties 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.

As the tenant confirmed that he was handed the 2 Month Notice by the landlord on January 1, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package on January 11 or 12, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

The tenant moved into one of the two basement rental suites in this dwelling in mid-April 2012. Current monthly rent is set at \$630.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$300.00 security deposit paid when this tenancy began. The parties agreed that the tenant paid monthly rent for January

and February 2018, but that the landlord has refused the tenant's attempted payment of his rent for March 2018. In this regard I note that after receiving a 2 Month Notice, a tenant is entitled to a monetary award equivalent to one month's rent, which explains why the landlord refused the tenant's March 2018 rental payment.

Although the effective date for the 2 Month Notice was February 28, 2018, I advised the parties that the earliest possible effective date for a 2 Month Notice issued on January 1, 2018 for this tenancy would be March 31, 2018.

The landlord's 2 Month Notice, entered into written evidence by the tenant, identified the following reason for seeking an end to this tenancy:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The tenant applied to cancel the 2 Month Notice because he maintained that the objective in removing him from his rented suite was to enable renovations to occur such that more rent could be obtained from his rental unit. He and his advocate asserted that the other basement tenant had not been issued a 2 Month Notice after he agreed to a monthly rent increase. The tenant questioned whether the property had actually been sold and maintained that the landlord had not acted in good faith in issuing the 2 Month Notice. The tenant entered written evidence and sworn testimony that one of the prospective purchasers who viewed his rental suite told him that he was not planning to live in the rental unit and that the tenancy could continue.

The landlord's realtor testified that she only showed the tenant's rental suite to two prospective purchasers because that suite did not "show well." The landlord's realtor gave undisputed sworn testimony that she did not show the tenant's rental suite to the party who purchased this property.

The landlord confirmed that there had been a monthly rent increase for the other basement tenant from \$700.00 to \$750.00 as of January 1, 2018. The landlord explained that no 2 Month Notice had to be issued to the other basement suite tenant because that tenant had told the landlord that he would be vacating the rental unit by mid-April, which the landlord found acceptable.

In support of the 2 Month Notice, the landlord entered into written evidence a copy of the December 20, 2017 Contract for Purchase and Sale of this property. This Contract contained statements requiring that the suites in the property be vacated by March 30,

2018, the day after this sale was to be completed, or when vacant possession of the property had been obtained. The Terms and Conditions of the sale required this property, including the suites, to be vacant. They also required a full renovation of the basement, which was to have occurred prior to the new purchaser taking possession of the property. The landlord also entered into written evidence a copy of the receipt for the deposit paid by the purchaser.

At the hearing, I sought to clarify how the landlord knew that the purchaser needed the rental unit for the purposes stated in the 2 Month Notice. The landlord's real estate agent who looked after the sale of this property said that she had not had any discussions with the purchaser to ascertain the purchaser's intentions after the sale was completed. The landlord gave undisputed sworn testimony that he had spoken with the purchaser after the sale agreement had been completed. The landlord testified that the purchaser told him that the purchaser planned to use the two current basement rental suites for accommodations for the purchaser's parents and for the purchaser's children.

### Analysis

In accordance with subsection 49(8) of the *Act*, the tenant must file an application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenant received the 2 Month on January 1, 2018 and filed the application for dispute resolution well within the fifteen day limit provided for under the *Act*.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

Paragraph 49(5)(c)(i) of the *Act* allows a landlord to issue a 2 Month Notice to end a tenancy for landlord's use of the property in the event that a purchaser asks the landlord in writing to give notice to end the tenancy because a close family member of the purchaser intends in good faith to occupy the rental unit.

As the tenant has questioned the extent to which the landlord was acting in "good faith" in issuing the 2 Month Notice, I have also considered *Residential Tenancy Policy Guideline #2*, which outlines the "Good Faith Requirement when Ending a Tenancy" in the following terms:

*A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...*

*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 that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

In this case, the landlord has entered into written evidence a copy of the Contract for Purchase and Sale that indicates that the purchaser is requiring the entire property, including all suites, to be vacated and renovated prior to the purchase taking effect. This written request does not specify that the purpose of obtaining vacant and renovated possession of the property is to enable the landlord to move close family members into the portion currently occupied by the tenant. However, based on the landlord's undisputed sworn testimony, I am satisfied that the landlord did have discussions with the purchaser in which the purchaser advised that the purchaser intends to move his parents and children into the two basement suites after the purchaser takes possession of the property. As parents and children qualify as "close family members" as defined under section 49(1) of the *Act*, I am satisfied that the reasons cited in the landlord's 2 Month Notice were issued in good faith and comply with the *Act*.

For these reasons, I dismiss the tenant's application to cancel this 2 Month Notice.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...*

Since the landlord's 2 Month Notice was issued in accordance with section 52 of the Act, I issue an Order of Possession in the landlord's favour. As the landlord indicated at the hearing that they were willing to allow this long-term tenant to remain in the rental unit until the end of April 2018 to provide him with an improved opportunity to obtain alternative accommodation, and the other basement tenant is not scheduled to leave until mid-April 2018, I issue an Order of Possession to take effect on April 30, 2018.

### Conclusion

I dismiss the tenant's application to cancel the 2 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on April 30, 2018. Should the tenant 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: March 02, 2018

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Residential Tenancy Branch