



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

The Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property, issued February 10, 2018 (the “Notice”), to order the Landlord to comply with the Act and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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 Matters

Both parties were advised that this hearing would focus on the priority issue regarding the tenancy and whether it would continue. I advised the Tenant that his claim to order the Landlord to comply with the Act would be considered at the end of the hearing if required and time allowed.

The Tenant testified that he sent the Notice of Hearing package to the Landlord, however, he did not produce the tracking number or copies of the Canada Post receipts. The Landlord acknowledged that he received the Notice of Hearing package and provided the Canada Post tracking number that indicated the Landlord signed for the

package on March 5, 2018. I find that the Notice of Hearing package was properly served on the Landlord.

The Tenant had submitted two pieces of evidence to the Residential Tenancy Branch on April 30, 2018 and initially, I did not accept this evidence because of the late submission (two days before the hearing). During the hearing, the Landlord referred to the late evidence and indicated that he had listened to the audio file many times. The Landlord consented to admitting the late evidence and, as I found that the admission of this evidence would not unreasonably prejudice any party, both pieces were admitted.

### Issues to be Decided

Should the Notice, issued February 10, 2018, be canceled and the tenancy continue?

Should the Tenant be compensated for the cost of the Filing Fee for this Application?

### Background and Evidence

The Landlord and the Tenant agreed that the tenancy began on February 1, 2014, on a fixed term basis, and was regularly renewed for one year at a time on an annual basis. The rent started out at \$2,500.00 a month and is currently \$2,650.00 a month, due on the first of each month. The Tenant has been paying his rent and has also paid for May 2018.

The Tenant submitted a copy of the Notice, dated February 10, 2018; although, the Tenant believes he removed it from his front door on February 9, 2018. On the Notice, the Landlord indicated that he intended to move into the rental unit and the effective vacancy date for the Tenant was April 30, 2018.

In a case where a Tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch - Rules of Procedure require the Landlord to provide their evidence submission first, as the Landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

### Landlord Evidence:

The Landlord testified that, over the past year, he and his wife have been struggling with their marriage and that it has been a very personal and stressful situation. In November of 2017, he approached the Tenant and stated that he hoped to move back into the rental unit, but did not disclose the reason. The Landlord and Tenant discussed a

mutual agreement to end the tenancy; however, this draft document was not produced as evidence. There were some disagreements regarding compensation and the agreement to end the tenancy was never finalized.

The Landlord acknowledged the change to Fixed Term Tenancies that took effect on December 11, 2017 and that this change affected the tenancy agreement he had with the Tenant.

The Landlord consulted a realtor in December of 2017 to explore the possibility of listing the rental unit and referred to the damaged carpet in the unit as the reason it was not listed, as the carpet, according to the realtor, would need to be replaced.

The Landlord stated that he had contacted the Residential Tenancy Branch on several occasions to receive guidance. He said that he received advice to talk with the Tenant and to explore solutions, rather than go through an arbitration process, if possible.

The Landlord called the Tenant on February 9, 2018 to advise him that the Notice would be served to the Tenant as the Landlord planned on moving into the rental unit. During this conversation, the Tenant encouraged the Landlord to make him an offer to move out of the rental unit. On April 20, 2018, the Landlord sent the Tenant an email offer with the condition to move out of the rental unit by May 31, 2018 at 1:00pm, however, the Tenant replied the same day and refused the offer.

The Landlord testified that he is still planning on moving into the rental unit as soon as possible.

#### Tenant Evidence:

The Tenant testified he heard from the Landlord in mid-November 2017 about not renewing the lease (the Tenancy Agreement noted the end of the fixed term was February 1, 2018). The Tenant referenced discussions and debate between the two parties that continued throughout November and into December about compensation, new Act legislation and negotiations about ending the tenancy. He also stated that the Landlord advised him on December 14, 2017 that the Landlord would be listing the rental unit for sale and in response, the Tenant provided the Landlord with advice from the Act regarding the requirement for two months' notice and compensation. After many texts and emails about fixing and possibly replacing the carpet, the Landlord didn't list the rental unit.

The Tenant referred to a conversation on February 9, 2018, when he received a call from the Landlord (this conversation was recorded by the Tenant and submitted as evidence). The Tenant stated that the Landlord advised him about the upcoming Notice

and although they talked about the possibility of negotiating terms for the end of the tenancy, the negotiations felt forced and threatening based on the pending eviction notice.

The Tenant testified that he felt the Landlord would say anything to end the tenancy. The Tenant stated that the Landlord didn't know what he was going to do with the rental unit throughout November, December and January, and considered selling it and then in February served the Notice with the reason that the Landlord would move into the rental unit.

The Tenant felt that the Landlord was trying to manipulate the system by firstly negotiating with the Tenant to end the lease, then considering the sale of the rental unit and now serving the Notice.

The Tenant admitted that he has always been open to negotiations and referred to the monetary offer to move out at the end of May 2018. The Tenant thought that the 48 hours given him to decide on whether to accept the offer was unfair and he declined.

The Tenant testified that he has no plans to move out of the rental unit.

#### Co-Landlord Evidence

The Co-Landlord, wife of the Landlord, provided affirmed testimony that she did not feel like living with the Landlord was working out and that the Landlord, for the purpose of improving their relationship, was trying to move back into their rental unit.

#### Analysis

I make the following findings based on the above, the relevant testimony and evidence, and on a balance of probabilities. Not all details of the respective submissions and arguments are reproduced here.

Section 49 of the Act permits a Landlord to end a tenancy in respect of a rental unit, if the Landlord intends in good faith to occupy the rental unit; that the Notice must comply with Section 52; and, that a Tenant may dispute the Notice by making an Application for dispute resolution within 15 days after the date the Tenant receives the Notice.

The Notice has been signed and dated by the Landlord, included the address of the rental unit and stated the effective date of the Notice. The Notice is in the approved form and I find that the Notice complies with Section 52 of the Act.

The Notice was dated February 10, 2018 and the Tenant applied to dispute the Notice on February 21, 2018. I find that the Tenant complied with the Act and disputed the Notice in accordance with the Act.

The Tenant contested the Notice based on his belief that the Landlord did not intend, in good faith, to occupy the rental unit. The *Residential Tenancy Policy Guideline #2- Good Faith Requirement when Ending a Tenancy*, helps explain this “good faith” requirement:

“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.”

The Landlord indicated on the Notice that he intends to occupy the rental unit for his own use. He provided testimony that his intention to occupy the rental unit is to provide some space in his relationship with his wife, where they are struggling in the current conditions of living together. The Landlord stated that he did not share this reason with the Tenant as the issue was very personal. The Co-Landlord provided similar testimony and stated that the Landlord’s intention is to move into the rental unit.

The Tenant submitted audio recordings of two conversations, that occurred prior to the service of the Notice, between the Landlord and Tenant to prove that the Landlord did not know what he was going to do with the rental unit, that the Landlord had been unclear about the end of tenancy and that there was a lack of good faith. After listening to the December recording, I noted that the Tenant told the Landlord that he, the

Tenant, would be pushing back and that the Landlord “pissed” him off and that it was going to cost the Landlord. In the February recording, the Tenant states, in relation to a potential eviction, that he has deep pockets and that moving ahead with an eviction is going to cost the Landlord a lot more. The Tenant threatened the Landlord by saying, “... we both know that a lot of damage can happen to an apartment in a good 6 weeks, correct?”

Although, initially, the Tenant’s sole evidence made me question the intentions of the Landlord, the comments in the audio recordings also cause me concern regarding the intentions of the Tenant. Having reviewed the evidence provided and the testimony during the hearing, I find that I have no compelling evidence before me to demonstrate that the Landlord has another purpose or motive other than to move into the rental unit once the tenancy with the Tenant has ended. I am left to rely on the Landlord and the Co-Landlord’s affirmed testimony to establish that the Landlord intends, in good faith, to occupy the rental unit.

I find that the Landlord has provided sufficient evidence to justify the issuance of the Notice and that the Notice, issued February 10, 2018, is valid and enforceable. Therefore, I dismiss the Tenants Application to cancel the Notice.

As the Landlord has accepted occupancy rent for the month of May 2018, I find it appropriate to extend the effective vacancy date in the Notice to May 31, 2018, pursuant to Section 66 of the Act. I find the Landlord is entitled to an Order of Possession effective on the above extended vacancy date.

Section 51(1) of the Act authorizes a Tenant who receives a Notice to End Tenancy under Section 49 to receive one month’s rent from the Landlord. As the Landlord has continued to collect rent from the Tenant, I find that the Landlord owes the Tenant the equivalent of one month’s rent in the amount of \$2,650.00 at the end of the tenancy.

As the tenancy is ending, there is no need to address the Tenant’s Application to order the Landlord to comply with the Act. I dismiss the Tenant’s Application to order the Landlord to comply with the Act without leave to reapply.

As the Tenant was unsuccessful in canceling the Notice, they will not be reimbursed for the Filing Fee.

### Conclusion

The Tenant's Application to cancel the Notice, issued on February 10, 2018, is dismissed.

The Tenant's Application to order the Landlord to comply with the Act is dismissed.

The Tenant's Application to recover the Filing Fee is dismissed.

I am granting the Landlord an Order of Possession to be effective on May 31, 2018. 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 and enforced as an Order of the Supreme Court of British Columbia.

The Landlord must compensate the Tenant with the equivalent of one month of rent at the end of the tenancy.

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: May 04, 2018

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Residential Tenancy Branch