



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      CNL CNR OLC MNDC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;

The hearing was conducted by conference call. All named parties attended the hearing and were provided a full opportunity to provide affirmed testimony and present arguments and evidence. No issues were raised with respect to the service of evidence.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice(s) to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

At the outset of the hearing, the landlord acknowledged a 30 Day Demand letter for utilities was not issued to the tenant prior to serving the tenant with the 10 Day Notice. The landlord agreed to withdraw the 10 Day Notice and proceed with the hearing on only the merits of the 2 Month Notice.

### Issues

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

### Background & Evidence

The rental unit is a suite on the lower level of a detached two-story house. The tenancy began on July 15, 2017. The written tenancy agreement entered into by the parties stipulated that the tenancy was for a one year fixed term ending on July 31, 2018. The monthly rent is \$1000.00 plus 50% of utilities and is payable on the 1<sup>st</sup> day of each month.

The landlord served the tenant with a 2 Month Notice on February 27, 2018. The Notice has an effective date of May 1, 2018. The 2 Month Notice was issued on the grounds that the landlord intends for her daughter to occupy the suite.

The landlord testified that her daughter recently became homeless and as an emergency needed new accommodation. Her daughter has since temporarily moved into the upper portion of the rental property as the upstairs tenants just vacated on short notice. The landlord testified that the upper portion of the home is above her daughter's economic ability as the rent is \$300.00 more than the lower portion. The landlord would like for her daughter to move into the lower portion of the home and re-rent the upper portion.

The tenant is disputing the 2 Month Notice. The tenant argues that now that the landlord's daughter has temporary accommodation she is not in an emergency situation. The tenant argues that the tenancy agreement stipulates that the tenancy would revert to a month to month tenancy after the end of the fixed term and there was no mention of the landlord's family moving in at the end of the term. The tenant also argues that the landlord should offer the upstairs portion of the home to the tenant since it will be vacant.

### Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

Further, 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

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 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.

I find the landlord has a good faith intention for her daughter to occupy the rental unit. The tenant was not specifically questioning the landlord's intention but rather arguing that the landlord's daughter is not in an emergency situation or that the landlord should offer the upstairs portion to the tenant. There is no requirement under the Act for a family member to be in an "emergency" situation in order to occupy a rental unit. Further, there is no requirement under the Act for the landlord to offer the tenant alternative accommodation in this case. I accept the landlord's testimony that the upper portion of the home is not economically feasible for her daughter and that she needs the lower portion for her daughter. Further, there is no requirement for the landlord to state in the tenancy agreement that the landlord was intending to occupy the rental unit at the end of the fixed term. That requirement is only in cases in which the landlord's intends to rely on a vacate clause for ending a fixed term tenancy. The landlord in this case is not relying on a vacate clause but has instead issued a 2 Month Notice in accordance with the Act.

In the case of a fixed term tenancy agreement, the effective date of a 2 Month Notice must not be earlier than the date specified as the end of the fixed term in the tenancy agreement. As this tenancy was for a fixed term ending on July 31, 2018, pursuant to section 53 of the Act, the effective date of the 2 Month Notice is automatically changed to July 31, 2018.

The tenant's application to cancel the 2 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

### Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on July 31, 2018**. Should the tenant(s) 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: May 23, 2018

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Residential Tenancy Branch