



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX WESTCOAST  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

On May 30, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) issued on May 28, 2018 and to recover the filing fee for their application. The matter was set for a conference call.

The Landlord and his property Manager as well as the Tenant and her Son attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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 cause sufficient to terminate the tenancy for the reasons given on the Notice.

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.

### Issues to be Decided

- Should the Notice issued on May 28, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

### Background and Evidence

Both parties testified that the tenancy began on October 15, 2017, as a six-month fixed term tenancy, and that rent in the amount of \$1,600.00, is to be paid by the first day of each month. Tenant's paid a security deposit of \$800.00 at the outset of this tenancy.

All parties agreed that the Notice was served on the Tenants on May 28, 2018, by posting it to the front door of the rental unit. The Notice indicated that the Tenants were required to vacate the rental unit on July 31, 2018. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that the rental property had been on the market for sale, but that he had taken it off the market on May 25, 2018, due to the need to use the rental unit to house his father. The Landlord provided a copy of the Unconditional Release Form he has signed to cancel the sale into documentary evidence.

The Tenant testified that they believe the Notice had been issued by the Landlord in response to the Tenant's not accommodating a showing of the rental unit. The Tenant also testified that the online listing and the for-sale sign on the front yard of the rental property did not come down until several days after they had received the Notice to end the tenancy. The Tenant provided a copy of the Notice into documentary evidence.

The Landlord's property manager (the Manager) testified that she had also been the listing agent for the sale of the rental unit. The Manager confirmed that the property had been taken off the market. The Manager testified that she had removed the online listing of the property on May 26, 2018, and requested that the for-sale sign be taken down. The Manager testified that the sign would have been taken down several days after she submitted the request as her company uses outside contractors to set up and removed signs.

The Tenant testified that there had been no showings of the rental unit after they had received the Notice to end the tenancy.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 49 of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. In this case, I find the Tenants did dispute the Notice within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

*Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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.*

I accept the testimony of the Landlord and the Manager that they took the rental property off the market on May 25, 2018, as the Landlord had changed his mind about selling the property and now intends to use the property to house his father. I accept that it took the Manager a few days to get the for-sale sign and the online listing removed.

I accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Therefore, I dismiss the Tenant's application to cancel the Notice issued on May 28, 2018.

I find the Notice issued on May 28, 2018, is valid and enforceable.

Under section 55 of the Act, if the tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than 1:00 p.m. on July 31, 2018.

As the Tenants have not been successful in their application to cancel the notice, I find the Tenants are not entitled to recover the filing fee for this hearing.

### Conclusion

I dismiss the Tenants' application to cancel the Notice issued on May 28, 2018.

I grant an Order of Possession to the Landlord effective not later than 1:00 p.m. on July 31, 2018. The Tenants must be served with this Order. Should the tenants 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: July 20, 2018

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Residential Tenancy Branch