



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC

### Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

On July 25, 2018 the Tenant made an amendment to the application claiming compensation arising from the Landlord’s conduct during the tenancy.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim for compensation is in relation to the Landlord’s conduct during the tenancy I find that this claim is not related to the matter of whether the tenancy will end and I dismiss the claim for compensation with leave to reapply.

### Issue(s) to be Decided

Does the Landlord have a good faith intention to occupy the unit?

Is the Landlord entitled to an order of possession?

### Background and Evidence

The tenancy started in November 2015. Rent of \$375.00 is currently payable on the first day of each month. No security deposit is being held by the Landlord. On June 25, 2018 the Landlord served the Tenant in person with a two month notice to end tenancy for landlord's use (the "Notice"). The reason stated on the Notice is that the rental unit will be occupied by the Landlord or a close family member of the Landlord. The effective date of the Notice is August 31, 2018.

The Landlord states that he intends in good faith to occupy the unit and that he has made financial preparations, has placed his homes that are located in another city for sale, has bought a barbeque and a cooler for the relocation, and has arranged to rent a vehicle for September 1, 2018. The Landlord states that he wants to move to the unit and live there full time with his new wife that he married in May 2018. The Landlord states that he has provided letters of reference from many community members setting out his connections with the community. The Landlord states that the unit is located on farm land that the Landlord used to operate with his previous wife until she became deceased. The Landlord states that he has been retired since 1996 and intends on continuing his retirement with his new wife and that he intends to restart the farming operation. The Landlord states that he has also been elected as a director on the board of fire commissioners for the community.

The Tenant states that at a previous hearing the Landlord stated that they would use the unit as a vacation unit and the Tenant believes that this intention has never changed. The Tenant states that the Landlord's evidence of the vehicle rented is too small for a household move and more likely supports the original intention of using the unit as a vacation home. The Tenant argues that the landlord's evidence of wanting to use the unit full time as a residence contradicts the evidence provided at the previous hearing. The Tenant argues that the Landlord is only attempting to overcome the previous Decision that found the previous notice with the same stated reason invalid. The Tenant argues that none of the Landlord's circumstances have changed. The

Tenant states that the houses in the other city were listed for sale before the previous Decision was made. The Tenant states that the Landlord was married in May 2017 and not in 2018 and that the Landlord gave evidence of his marriage at the previous hearing. The Tenant argues that the financial arrangements given by the Landlord as evidence to support the current notice were made before the first Decision. The Tenant states that the Landlord started his position of Director in the community in 2016 and that this is not a change in circumstances. The Tenant states that she believes the Landlord intends to continue using the unit as a vacation home. The Tenant argues that this use does not fulfill the requirement of occupation as occupy means full time year round occupancy. The Tenant states that the reference letters from the community members is not relevant and also appears to have been coached by the Landlord as one of those letters refers to the Landlord beginning his retirement at the unit. The Tenant states that the Landlord has deliberately attempted to mislead the proceedings by providing these letters.

The Tenant argues that vacation homes are not permitted on agricultural reserve land upon which the unit is located. The Tenant states that the Landlord intends to use the unit as vacation property even if he is subject to penalty for this use or pressure to comply with the allowed use. The Tenant states that the Landlord's stated intention to live at the unit full time is in contradiction to previous evidence that the Landlord said the unit was not suitable for winter occupancy. The Tenant agrees that the pipes freeze over winter is not maintained, that the area is subject to floods. The Tenant argues that the only change in circumstances is the rental of the vehicle and the purchase of a barbeque.

The Landlord's legal Counsel argues that evidence of the sale of the property is evidence of a change in circumstances as although the properties were listed in June 2017 they were also taken off the listing and then re-listed. Legal Counsel argues that another change in circumstances is that the Landlord now has legal counsel. Legal counsel submits that another change of circumstances is that the Landlord now wants

to live there full time as opposed to part time. Legal Counsel argues that the sale of the houses located in a different city was not provided as evidence at the previous hearing. The Landlord states that at the time of the previous hearing he was not married or living with the person he is now married to. The Landlord stresses that now that he is married both he and his wife want to live in the unit. The Landlord states that his new wife is an artist and is looking forward to continuing her art work at the unit. The Landlord states that he does not require a large moving van as the unit is fully furnished and his new wife does not have much furniture or household items. The Landlord states that he has no idea whether vacation homes are not allowed on the agricultural land reserve and that he is not concerned about any penalty as there is no intention to use the unit as a vacation home. Legal Counsel argues that the Landlord has satisfied the requirement to provide evidence of an honest intention to move into the unit with no ulterior motive. The Landlord states that there is no intent to sell or rent or demolish the unit.

The Tenant states that the Landlord removed all the tools required to maintain the house over the winter and that this contradicts the Landlord's stated intention of living there over the winter. The Landlord states that these items were removed due to a fear of theft, were taken to Victoria and will be moved back with the Landlord. The Tenant confirms that rent for August 2018 has been paid and the Landlord states that if the Notice is found to be valid the Landlord would want an order of possession to be effective September 30, 2018.

### Analysis

Section 49(3) of the Act provides 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. Section 77(3) of the Act provides that a decision or an order is final and binding on the parties. The previous Decision dated March 28, 2018 dealt with a one month notice to end tenancy for landlord's use with the stated reason that the landlord or a close family member of the landlord intends to occupy the unit. The previous Decision cancels the previous notice noting the Landlord's intention

to use the property as a vacation spot or to convert the unit to non-residential use. The Tenant argues that she believes the Landlord does not have a good faith intention as the Landlord will only use the unit as a vacation spot. The Tenant argues that because the Landlord gave this evidence at the previous hearing and because the previous notice was cancelled that the Landlord therefore cannot argue this again. Although the previous Decision is binding on the Parties, I am not bound to apply previous decisions. This is a different dispute with a new notice to end tenancy. Further although the reasons stated on the Notice are the same as the notice that was disputed in the previous Decision, there is evidence of a change in circumstances in that the Landlord has now placed his homes for sale, intends to occupy the unit full time as opposed to part time, and intends to restart farming on the land.

While the Landlord does give inconsistent evidence from the previous hearing in relation to its marriage I do not consider this as going to the Landlord's credibility but only due to the Landlord's nervousness at the hearing. While the Landlord's previous evidence of the unit being unsuitable for winter living may be inconsistent with the Landlord's stated intention of living in the unit year long, I also note that the unit has been used yearlong by the Tenant. I do not consider the Landlord's inconsistencies as going to the heart of the good faith intention of the Landlord. It is clear from the evidence of the Landlord's previous submissions that the Landlord wanted "unfettered access" and "exclusive use" for him and his family to the unit and to "enjoy the farm". I note that Black's Law Dictionary defines "occupy" as including "to hold or keep for use" and "to hold possession of". There is no evidence that the Landlord intends to rent the unit out to somebody else or to otherwise attempt to subvert the intent of the Act. The Act carries no intention to stop an owner from using its property for her or his occupancy. For these reasons I find that the Tenant has not substantiated that the Landlord does not have a good faith intention to occupy the unit. I therefore dismiss the Tenant's claim to cancel the Notice.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the finding that the Notice is valid, I find that the Landlord is entitled to an order of possession. In accordance with the Landlord's request, I grant the Landlord an order of possession effective 1:00 p.m. on September 30, 2018.

### Conclusion

The Notice is valid. I grant an Order of Possession to the Landlord effective 1:00 p.m. on September 30, 2018. 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: August 22, 2018

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Residential Tenancy Branch