



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the Tenant: MT, CNL, FFT  
For the Landlords: OPL, FFL

### **Introduction**

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting additional time to request a cancellation of a notice to end tenancy and to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property. The Tenant also requests an order for payment of the filing fee.

The Landlords filed a counter-claim against the Tenant requesting an Order of Possession and payment of the filing fee. The Landlords stated at the outset that they are no longer disputing the claim for additional time for the Tenant to have applied to dispute the Notice to End Tenancy, due to personal circumstances that delayed his filing of the Application with the Residential Tenancy Branch. The Landlord acknowledged that the Landlord’s family member was hospitalized and this caused an unexpected delay. The Landlord stated they were prepared to proceed despite the late filing.

The Landlords and Tenant appeared for the scheduled hearing; the Tenant was excused for health reasons shortly after the start of the hearing, as he had arranged for an agent to represent him on his behalf, “SG”, for the hearing and presentation of evidence. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

### Issues to be Decided

Is the Tenant entitled to additional time to apply to cancel a notice to end tenancy pursuant to Section 66 of the Act?

Is the Tenant entitled to a cancellation of the Two Month Notice to End Tenancy, pursuant to section 49 of the Act?

If not, are the Landlords entitled to an Order of Possession pursuant to sections 49 and 55 of the Act?

Is either party entitled to payment of their filing fee, pursuant to section 72 of the Act?

### Background and Evidence

This tenancy began February 1, 2016 as a one year fixed term tenancy at \$650.00 per month. It converted to a month-to-month tenancy thereafter, and rent was eventually increased to \$702.00, payable on the 1<sup>st</sup> of each month. A security deposit of \$325.00 was paid. A copy of the signed tenancy agreement was submitted into evidence.

The Landlord explained that there was a marital breakdown and text messages between the two Landlords were submitted into evidence from June of 2018 confirming that there was a need for the one Landlord and his wife to separate; it was later decided that the one Landlord required the use of the rental unit to occupy it for himself and two children of his marriage. A Notice to End Tenancy was served on the Tenant by registered mail on August 10, 2018 and signed as having been delivered to the Tenant on August 13, 2018; due to family medical issues, he was unable to file a dispute application until August 29, 2018.

The Notice is dated August 9, 2018 with an effective date of October 31, 2018. The reason given is that the Landlord or his immediate family intend to reside in the rental unit after that date. The Notice was submitted into evidence.

The Tenant states that the Notice was not served in good faith, due to the fact that there were ongoing concerns about needed repairs and other issues between the Tenant and Landlords. It is his position that the Notice was served in retaliation for the concerns raised and the Tenant's attempts to enforce his rights during the tenancy. The Tenant

brought an application which was heard on July 4, 2018, where the following settlement agreement was entered into between the parties:

*“During the hearing, the parties agreed to settle the repair requests before me, on the following conditions:*

- 1. The parties agree that at the expense of the landlords the landlords will arrange to have an electrician attend the rental unit to inspect and if necessary, repair the thermostat to the electric baseboard heaters by **July 20, 2018 at 5:00 p.m.** The parties agree that for this purpose of this mutual agreement that notification to the tenant by email within 24 hours of a service/repair visit is agreed between the parties upon confirmation by the tenant to the email from the landlord.*
- 2. The parties agree that at the expense of the landlords the landlords will arrange to have an electrician attend the rental unit to inspect and if necessary, repair the ceiling fan by **July 20, 2018 at 5:00 p.m.** The parties agree that for this purpose of this mutual agreement that notification to the tenant by email within 24 hours of a service/repair visit is agreed between the parties upon confirmation by the tenant to the email from the landlord.*
- 3. The parties agree that at the expense of the landlords the landlords will arrange to have an electrician attend the rental unit to inspect and if necessary, repair the smoke detector by **July 20, 2018 at 5:00 p.m.** The parties agree that for this purpose of this mutual agreement that notification to the tenant by email within 24 hours of a service/repair visit is agreed between the parties upon confirmation by the tenant to the email from the landlord.*
- 4. The parties agree that at the expense of the landlords the landlords will arrange to have a contractor attend the rental unit to inspect and if necessary, clean the dryer ducting and vent pipe by **July 20, 2018 at 5:00 p.m.** The parties agree that for this purpose of this mutual agreement that notification to the tenant by email within 24 hours of a service/repair visit is agreed between the parties upon confirmation by the tenant to the email from the landlord.*
- 5. The parties agree that at the expense of the landlords the landlords will arrange to have a contractor attend the rental unit to install a transition strip between the laminate flooring joint by **July 20, 2018 at 5:00 p.m.** The parties agree that for this purpose of this mutual agreement that notification to the tenant by email within 24 hours of a service/repair visit is agreed between the parties upon confirmation by the tenant to the email from the landlord.*
- 6. The parties agree that at the expense of the landlords the landlords will arrange to have a contractor attend the rental unit to inspect and if necessary, clean the laundry room from cobwebs and dryer lint by **July 20, 2018 at 5:00 p.m.** The*

*parties agree that for this purpose of this mutual agreement that notification to the tenant by email within 24 hours of a service/repair visit is agreed between the parties upon confirmation by the tenant to the email from the landlord.*

7. *The parties agree that at the expense of the landlords the landlords will ensure that all common areas have a snow removal plan in place in case of snow. “*

The Landlords state that these issues raised by the Tenant during the tenancy, in the previous hearing and again in this application are not relevant to the issue of whether the tenancy ought to end due to the Landlord's use of property, as stated in their Notice. They request an Order of Possession effective October 31, 2018. The Landlords state that the Tenant paid his October rent, but that it will be paid back once the tenancy ends on the effective date. The Tenant states that the Notice was not provided in good faith and ought to be set aside so that the tenancy may continue.

### Analysis

The Tenant was required to file an application to dispute a notice under section 49 within 15 days of service of the Notice to End Tenancy; the Tenant admitted receiving the Notice on August 13, 2018 and I find that the Tenant filed this dispute on the 16<sup>th</sup> day after service, on August 29, 2018. The Tenant requested additional time to file the dispute and also submitted substantial medical evidence and records to show that he was dealing with a serious medical matter in the family. As the Tenant also suffers from issues of anxiety and other health issues, this family member was suddenly unable to be available to complete filing a dispute on behalf of the Tenant by the deadline. The Landlord does not take issue with the request for additional time and therefore I find that there is no prejudice to the Landlord and I am allowing the Tenant the additional day to have filed his dispute application.

The Landlords' Two Month Notice to End Tenancy, entered into written evidence by the Tenant, identified the following reasons for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

Under section 49 of the Act, a landlord may end a tenancy with two months' written notice:

### ***Landlord's notice: landlord's use of property***

**49** (1) *In this section:*

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

... (2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,

- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy,...

(3) 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.**

...

(7) A notice under this section **must comply with section 52** [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

- (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

- (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) must vacate the rental unit by that date. [bolding added]*

I have reviewed the Notice to End Tenancy which was served using the prescribed form under section 49 of the Act. The Notice was served by registered mail in accordance with section 88 of the Act and the Tenant disputed the notice. I find that the Notice meets the requirements in form and in content, which under section 52 is:

**52** *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,*
- ...*
- (e) when given by a landlord, be in the approved form.*

The Tenant has taken the position that the Notice was served in retaliation for the Tenant's complaints during the tenancy. The Tenant's complaints from the tenancy were addressed in the previous hearing and the parties voluntarily came to a settlement agreement. The Tenant may seek compensation if the agreement was not complied with, but that is not a matter before me today.

Residential Tenancy Policy Guideline #2 defines "good faith" as a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that 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 tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

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

I find that the matter of terminating the tenancy is a separate issue which involves the Landlord's decision to separate from his wife and set up his own household in the rental unit. The text messages submitted suggest to me that there were marital issues for some time, and that the couple recently determined a physical separation was required at this point. The Tenant and Landlords have not submitted any evidence to suggest that this is not in fact the case.

Accordingly, I am granting the Order of Possession in favour of the Landlords and dismissing the Tenant's application. I am also granting the filing fee of \$100.00 to the Landlords, which may be deducted from the one month rent owing to the Tenant under the provisions of section 51(1). The net payment owing to the Tenant will be \$602.00.

### Conclusion

I grant an Order of Possession to the Landlords effective **1 PM on October 31, 2018** on the Tenant. 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 Landlords shall pay the Tenant the sum of \$602.00 as compensation under section 51(1) for having ended this tenancy under a Two Month Notice.

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: October 17, 2018

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Residential Tenancy Branch