



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL FF

### Introduction

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

- Cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") pursuant to section 49 of the *Act*; and
- Return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing. The tenant was represented at the hearing by his counsel, L.W. while the landlord was represented by counsel K.H. Witnesses K.H. and M.J. also appeared for the landlord. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") after it was served in person on September 15, 2018.

The landlord confirmed receipt of the tenant's application for dispute, while the tenant confirmed receipt of the landlord's evidentiary package. Both parties are found to have been served with these documents in accordance with the *Act*.

### Issue(s) to be Decided

Can the tenant cancel the landlord's Notice to End Tenancy?

Is the tenant entitled to a return of the filing fee?

### Background and Evidence

Submissions provided by the landlord's counsel explained this tenancy began on April 15, 2015. Rent is \$810.00 per month, while a security deposit of \$390.00 paid at the outset of the tenancy continues to be held by the landlord.

On September 15, 2018 the landlord served the tenant with a 2 Month Notice for Landlord's Use of Property. The reason cited on the 2 Month Notice was listed as follows:

*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The landlord called witness K.H. who was the wife of the landlord's son. K.H. explained she and her family intended to occupy the rental unit after relocating from a northern community due to her husband's studies at a local post-secondary institution. K.H. said her husband's employer had sponsored his studies and he was registered and enrolled in a four year program at the school. The landlord produced an acceptance letter confirming this. This program runs for ten weeks each year and begins January 2, 2019. K.H. explained she was on maternity leave for one year and intended to occupy the suite for longer than the ten week program, though she could not provide an exact time frame on her intended stay.

As part of the evidentiary package, the landlord included the above mentioned letter from the post-secondary institute that explained K.H.'s husband was enrolled in the four year program as described in K.H.'s testimony. K.H. said that it was important for her and her two children to reside close to her husband because of the challenges surrounding parenting young children. K.H. said, the family also wished to reside close to her husband's parents (in this case the landlord) so that they can also assist with parenting. K.H. said it was impractical for her and her family to share the space previously afforded to them in the parents' home because of the limited space available. K.H. described past visits to the city during which she and her husband were able to stay with the landlord (husband's parents); however, she said that since her last visit their family had expanded, making this sleeping arrangement impractical.

The tenant and his counsel questioned the good faith by the landlord in issuing the Notice to End Tenancy. The tenant and his counsel explained another rental unit was potentially available for occupation on the premises and questioned why the landlord

had chosen the unit in question to issue the notice to end tenancy. The tenant said he suffered from severe anxiety and, as a result, received provincial disability benefits to assist him with his rent. The tenant explained that approximately three months into his tenancy he asked the landlord to complete some forms associated with the payment of rent via the provincial government. The tenant said this request was rebuffed by the landlord and he suspected the landlord took issue with his continued presence in the rental unit. The tenant alleged adequate room was present in the upper living area currently occupied by the landlord for the landlord's family to remain on the property. Furthermore, counsel for the tenant questioned the definition of "occupy" and argued that the landlord's family did not adequately meet the definition by occupying as contemplated by the *Act* because the landlord's son and daughter-in-law would only be on the premises while the landlord's son attended a ten week course each year. The tenant disputed the landlord's contention that the unit was required for an extended period.

### Analysis

Subsection 49(3) of the *Act* states that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*A claim of good faith requires honesty of intention with no ulterior motive...*

*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 that they do not have an ulterior motive for ending the tenancy.*

This two part test requires a landlord to demonstrate that (i) they truly intend to use the premises for the purposes stated on the notice to end the tenancy and (ii) they must *not* have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

After having considered the oral testimony of all parties present and after reviewing the evidence submitted at the hearing, I find sufficient evidence on the balance of probabilities that the landlord truly intends to use the premises for the purposes stated on the Notice to End Tenancy. The landlord produced evidentiary documentation confirming the attendance of their child's enrollment at a local post-secondary institution and I accept the testimony presented by witness K.H. that she and their children intended to join her husband in Vancouver while he pursues his studies. I find this is a reasonable plan, given the length of the husband's course and the age of the children.

During the hearing the tenant and his counsel questioned the necessity of the landlord's family to use the suite in question and argued that a ten week usage should not be considered "occupying". I find these arguments fail to show that the landlord does not intend to accomplish the stated purpose for ending the tenancy or that the rental unit will not be used for the stated purpose for at least six months after the effective date of the notice as per the requirements of *Policy Guideline 2(F)*. During the hearing K.H. acknowledged that her family would not live on the property full-time; however, I find that she will sufficiently live on the property as is required by the *Act* and *Policy Guideline*. These requirements are that the landlord intends in good faith to move into the rental unit or allow a close family member to move into the unit, and that the unit is used for the stated purpose for at least six months beginning within a reasonable period after the effective date of the notice. In this case, I accept the program length to be four years and accept the unit will be used on and off for the duration of this program.

In addition to questioning the good faith requirement of the notice to end tenancy, counsel for the tenant argued the short stay of the landlord's family did not meet the definition of "occupy" as contemplated by the *Act*. Counsel for the landlord highlighted the definition of "occupy" as provided by Black's Law Dictionary which states "occupy" to mean "hold in possession or keep for use." I note there is no time frame requirement provided by this definition. In addition, the landlord made it clear that no other persons other than their immediate family members would be occupying the suite in the near future because they wanted to maintain the units availability for use by their son and their son's family when he is required to come to the Lower Mainland to pursue studies

over the next four years. The documents showing admissions and enrollment into this four year course clearly supported this statement. Accordingly, I am satisfied that there is no ulterior motive on the part of the landlord and find they truly intends to have a close family member occupy the suite.

I dismiss the tenant's application to cancel the landlord's 2 Month Notice dated September 14, 2018 and grant the landlord an Order of Possession effective November 30, 2018. The tenant must bear the cost of his own filing fee.

### Conclusion

The tenant's application to cancel the landlord's 2 Month Notice to End Tenancy is dismissed without leave to reapply. The landlord is granted an Order of Possession effective November 30, 2018.

The tenant must bear the cost of his own filing fee.

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 30, 2018

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Residential Tenancy Branch