



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ISLAND EXPLORER PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, OPT, PSF, FFT

### Introduction

On October 1, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a 2-Month Notice to End Tenancy for Landlord’s Use of Property, to obtain an Order of Possession for the Tenants, to obtain an order for the Landlord to provide services, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Property Manager and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Property Manager testified that he did not submit any evidence for the hearing and that he received the documentary evidence package from the Tenant; of which, I have before me.

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.

### Preliminary Matter

In accordance with Section 64(3) of the Act and with the consent of the Tenant, I have amended the Tenants’ Application by severing the claim for an order to provide services, as the priority issue for the hearing was to establish whether the tenancy would continue or not.

The Tenant confirmed that he was currently in possession of the rental unit. Therefore, the request for the Order of Possession has also been severed.

### Issues to be Decided

Should the 2-Month Notice to End Tenancy for Landlord's Use of Property, dated September 11, 2018 (the "Notice"), be cancelled, pursuant to Section 49 of the Act?

If the Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Tenant receive compensation for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Property Manager and the Tenant agreed on the following terms of the tenancy:

The two-year, fixed term tenancy began on September 1, 2011, was renewed on September 1, 2013 for another three-year term and has continued on as a month-to-month tenancy since September 2016. The monthly rent of \$1,750.00 is due on the first of each month and the Tenant paid a \$750.00 security deposit and a \$750.00 pet damage deposit.

The Property Manager testified that he served the Notice to the Tenants via registered mail on September 12, 2018. The Notice provided a vacancy date of April 30, 2019 and indicated that the Notice was issued because the Landlord intended to occupy the rental unit.

The Property Manager stated that the Landlord intends on making repairs to the rental unit and using it for the purposes of occupying the unit for themselves and their larger family.

The Property Manager stated that the Landlord is aware of his responsibilities under the Act and that if he didn't follow through with the reasons on the Notice, that he may have to compensate the Tenants for an amount equal to twelve months of rent. The Property Manager reaffirmed that the Landlord intends to make use of and occupy the rental unit for his personal use. The Property Manager stated that the Landlord did not want to negotiate a different vacate date with the Tenants.

The Tenant acknowledged that he received the Notice and it was in good order.

The Tenant testified that early in the tenancy, the Landlord attempted to negotiate a two-week term in the summer for the Tenants to vacate the rental unit for the Landlord's use. The Tenant stated that when they did not agree, the Landlord tried to excessively raise the rent for the new lease; however, the Tenants contacted the Residential Tenancy Branch and advised the Landlord they could not raise the rent by that amount. The Landlord became upset with the Tenants.

The Tenant referred to an email he had with the previous management company in December 2015, where the Tenant alleged that the Landlord's intentions were to end the tenancy and convert the rental unit into two separate units, so they could use one for their summer holidays and to rent out the other unit. The Tenant stated that the management company had replied that even if the Landlord was convicted of a false claim, the cost to them would merely be a fine of two times the monthly rent.

The Tenant stated that the previous management company, from 2014-2016, hassled the Tenants about their license to legally grow medical cannabis. The Tenant acknowledged that there have been no issues since that time.

The Tenant testified that in an email with the Property Manager in February of 2018, the Property Manager indicated that the Landlord is intending on using the rental unit as a "family get away", as many of them live outside of Canada. The Tenant questioned how someone who lives outside of Canada can move into and fully "occupy" the rental unit.

The Tenant stated that his wife is currently dealing with some serious health issues and that if the Landlord forces them to leave the rental unit, that his wife's health is at stake. The Tenant stated that he would be willing to leave the rental unit by April 30, 2020.

### Analysis

Section 49(3) of the Act states that a Landlord may end a tenancy in respect of a rental unit if the Landlord intends in good faith to occupy the rental unit.

The *Residential Tenancy Policy Guidelines #2* (the "Guidelines") discusses the legal concept of good faith. The Guidelines refer to *Gichuru v Palmar Properties Ltd*, 2011 BCSC 827 for the suggestion that good faith requires honesty of intention with no ulterior motive.

The Tenant has raised concerns that because the Landlord may not be a Canadian citizen, that he cannot legally "occupy" the rental unit. Although the *Residential*

*Tenancy Act* does not specifically define “occupy”, it is generally interpreted as “to make use of.” Examples of an Arbitrator finding that a Landlord is “occupying” a rental unit may be when, after the tenancy has ended, the Landlord uses it for storage purposes or when the Landlord uses it for personal or close family use, even when only on a temporary basis, but for a minimum of six months. See Section 51 of the Act for further details.

I accept the Property Manager’s testimony that the Landlord intends to occupy the rental unit for the purposes of his own use and not to re-rent the unit to other tenants. I also accept the Tenant’s undisputed testimony that the Property Manager stated that the Landlord is intending on using the rental unit as a “family get away” and find that both of these intentions fit with the definition of “occupy”. As such, I find that the Landlord intends to occupy the rental unit, in accordance with Section 49 of the Act.

The Tenant attempted to bring the good faith intent of the Landlord into question by relating the service of the Notice with past conflicts with the Landlord that included; the Tenants denying the Landlord access to the rental unit for a few weeks in the summer; and, the dispute regarding the growing of medical cannabis in the rental unit. As these were the only submissions the Tenant provided, and all of these issues occurred prior to 2017, I find that the Tenant has failed to provide sufficient evidence to support that the Landlord is intending to act dishonestly or has an ulterior motive.

As a result of the testimony, evidence and the findings above, I dismiss the Tenants’ Application to cancel the Notice without leave to reapply.

Section 55 of the Act requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a Notice that is compliant with the Act. As I have dismissed the Tenants’ Application and find that the Notice is compliant with the Act, I further find that the Landlord should receive an Order of Possession for the rental unit, effective April 30, 2019, as indicated on the Notice.

The Tenants’ Application was unsuccessful; therefore, I do not award compensation to the Tenants for the filing fee.

### Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on April 30, 2019 at 1:00 p.m. This Order should be served on the Tenants as soon as possible. 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: November 09, 2018

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Residential Tenancy Branch