



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes          CNL, ERP, OLC

### Introduction

On October 14, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking an Emergency Repair Order pursuant to Section 62 of the *Act*, and seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing with J.M. attending as her advocate. The Landlord attended the hearing with T.C. attending as her agent. All in attendance provided a solemn affirmation.

The Tenant confirmed that she served the Landlord the Notice of Hearing package by registered mail on October 18, 2018, and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing package.

The Tenant confirmed that she served the Landlord her evidence by registered mail and the Landlord confirmed that she received this package. As well, the Landlord confirmed that she had reviewed this evidence and was prepared to respond to it. As such, I am satisfied that the Landlord was served with the Tenant's evidence. Thus, this evidence was accepted and considered when rendering this decision.

The Landlord advised that her evidence was served to the Tenant by hand on November 8, 2018 and the Tenant confirmed receipt of this package. In accordance with Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenant was appropriately served with the Landlord's evidence.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, that

her other claims would be dismissed, and that the Tenant is at liberty to apply for these claims under a new and separate Application.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that 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 to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on January 1, 1999 and rent was currently established at \$425.00 per month, due on the first day of each month. A security deposit was not paid.

The Landlord advised that the Tenant was served the Notice by being posted on the door on September 28, 2018. The reason the Landlord served the Notice is because "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 Tenant advised that she received the Notice that day and subsequently made her Application to cancel the Notice. The effective date of the Notice was November 30, 2018.

The Landlord confirmed that they will be occupying the rental unit for themselves and their extended family immediately after the effective date of the Notice. She stated that the rental unit will be used for their personal use as their family has become quite large and they need the extra space to accommodate them. The Landlord submitted letters into evidence substantiating

their justification for occupying the rental unit. The Landlord stated that the rental unit will be used by them, or their close family members and their family, often throughout the year.

The Tenant submitted that this Notice was issued in bad faith as the Landlord is changing the use of the property to a vacation property and they have no intention to use it as a permanent residence. J.M. advised that it was his belief that the Landlord should have served a 4 Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit instead as the Landlord is changing the use of the rental to a “non-residential” use. The Tenant advised that she feels upset and abused by the process as she has lived there for 19 years and believes this Notice was served “out of the blue”.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* outlines the Landlord’s right to 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

When reviewing the totality of the evidence before me, I find it important to note that the Landlord has provided testimony and submitted written evidence corroborating that they and their children will be occupying the rental unit once vacant. In addition, the Landlord has also stated that the reason they require the rental unit back is because they want to occupy the extra space for themselves and their growing immediate family. I do not find that there is any evidence to conclude that the Landlord has another purpose or an ulterior motive for ending the tenancy with this Notice.

While I understand the Tenant’s concerns and opinion that the Landlord is changing the use of the rental unit, the Tenant could not elaborate on how the Landlord’s stated use would be specifically considered “non-residential” and that this would necessitate service of the 4 Month Notice instead. As such, I am satisfied that the Landlord has substantiated that she intends to use the rental unit for the stated purpose and as such, there are no grounds to cancel the Notice.

As the Two Month Notice to End Tenancy for Landlord’s Use of Property issued by the Landlord on September 28, 2018 complies with the requirements set out in Section 52, I uphold the

Notice, I dismiss the Tenant's Application, and I find that the Landlord is entitled to an Order of Possession that is effective **at 1:00 PM on November 30, 2018 after service of this Order** on the Tenant, pursuant to Sections 52 and 55 of the *Act*.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective **at 1:00 PM on November 30, 2018 after service of this Order** 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.

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 16, 2018

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Residential Tenancy Branch