



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNL FFT

### 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 (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was assisted by their family member.

As both parties were present service was confirmed. The parties each confirmed that they had been served with the other's materials. Based on the testimony I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee from the landlord?

### Background and Evidence

This periodic tenancy began in October 2014. The monthly rent is \$900.00 payable on the 1<sup>st</sup> of each month. The rental unit is a basement unit in a detached home. The landlord resides in the main floor. The landlord issued the 2 Month Notice dated April 2, 2019. The 2 Month Notice indicates the reason for this tenancy to end is that the landlord or close family member intends to occupy the rental unit.

The landlord testified that their adult son intends to reside in the rental suite. The landlord explained that the adult son has recently completed post-secondary education out of the country and has returned to live with the landlord. The landlord explained that the landlord's suite provides little space or privacy and they wish for the adult son to reside in the rental unit. The landlord gave evidence that the adult son is currently searching for employment in a geographic area commutable from the rental suite.

The landlord explained that the tenant expressed concerns about the effective date of the 2 Month Notice and so they entered discussions about finding a mutually convenient date that the tenancy could end. The landlord said they reached an agreement and prepared a Mutual Agreement to End Tenancy but the tenant refused to sign and insisted that instead a new 2 Month Notice be issued.

The tenant submits that he disbelieves the landlord's good faith intention to end this tenancy for the reasons stated. The tenant questions whether the landlord's son is seeking employment in an area where residing in the rental unit makes sense. The tenant testified that they were not aware of the son's existence during the tenancy and questions how long the post-secondary program took. The tenant points to the landlord's preparation of a Mutual Agreement as being evidence of bad faith as they believe that by replacing the 2 Month Notice with an agreement the landlord would not be liable for paying compensation to the tenant pursuant to section 51 of the *Act*.

### Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

I find that the tenant filed their application to dispute the 2 Month Notice of April 2, 2019 on April 11, 2019 and was within the timeline provided under the *Act*.

In the case at hand the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the landlord intends in good faith to have the rental unit occupied by the landlord or a close family member.

The tenant questions the intention of the landlord and raises a good faith argument about the landlord's plans.

Residential Tenancy Branch Policy Guideline 2 suggests that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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 the Tenancy.

Policy Guideline 2 reads in part as follows:

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

I find that there is sufficient evidence to find that the landlord intends, in good faith, for the rental unit to be occupied by their adult son. I find the landlord's explanation to be consistent, cogent and reasonable. I find it reasonable that a young adult would require the privacy and independence available in a basement suite. I accept the evidence that the adult son intends to reside in the rental suite and is seeking employment in the area. I accept the landlord's evidence that their financial situation is stable and that they are not seeking higher rental income.

I find the tenant's suggestion that the landlord's preparation of a Mutual Agreement to End Tenancy rather than issue a new 2 Month Notice as evidence of bad faith to be unpersuasive. If the parties had come to an agreement on a date that the tenant would vacate it would be sensible to draft and sign a Mutual Agreement. For the tenant to insist upon a new 2 Month Notice which the tenant could then file an application to dispute and start the cycle anew is unreasonable. The tenant's submission that the only reason for a Mutual Agreement is to deny the tenant their right to compensation under section 51 is without any merit.

I find that the landlord has provided sufficient evidence to support their intended use of the property. I find that the landlord's testimony and documentary evidence demonstrate the good faith intention of the landlord. I find that on a balance of probabilities I am satisfied the landlords will use the rental unit for the purpose expressed.

Therefore, I dismiss the tenants' application to cancel the landlord's 2 Month Notice.

Section 55(1) of the *Act* reads in part as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52..., and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...*

As I have dismissed the tenant's application and I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the *Act*, I issue a formal Order of Possession in the landlord's favour pursuant to section 55. I issue an Order of Possession effective on the effective date of the 2 Month Notice.

As the tenant's application was unsuccessful they are not entitled to recover the filing fee.

#### Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is dismissed.

I issue an Order of Possession to the landlord, effective June 30, 2019. 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: May 28, 2019

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Residential Tenancy Branch