



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, MNDCT, OLC, RP, RR

### 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;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing. The landlord was represented by their legal counsel. The tenants were represented by an advocate. The parties gave affirmed testimony.

### Preliminary Issue- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice and the continuation of this tenancy are not sufficiently related to the tenant's monetary claim to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's monetary claim is unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice to End Tenancy. I exercise my discretion to dismiss the tenant's monetary claim with leave to reapply.

At the outset of the hearing, the issue of the timing of the tenant's application arose. It was noted that section 49(8)(a) of the *Act* provides that a tenant who receives a notice to end tenancy for landlords use of property has 15 days to dispute the notice when the ground to end the tenancy is that the landlord or close family member intends to move in. Further, section 49(9) of the *Act* confirms that failure to dispute the notice in the required time period results in the conclusive presumption that the tenant has accepted the tenancy ends on the effective date of the notice.

In this case, the advocate and tenants agreed and confirmed that the Two Month Notice to End Tenancy for Landlords Use of Property was served on July 17, 2019 and received by the tenants on July 20, 2019. Furthermore, the tenants and their advocate agreed and confirmed that they did not file an application to dispute the notice until August 13, 2019; 23 days after receiving the notice. Accordingly, I find that the tenants were outside of the legislated timeline to dispute the notice and are conclusively presumed to have accepted that the tenancy ended on the effective date of September 30, 2019.

Based on the above, I hereby dismiss the tenant's application to set aside the notice without leave to reapply.

When a tenant's application to cancel a notice to end the tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession. I have examined the Two Month Notice to End Tenancy for Landlords Use of Property dated July 17, 2019 with an effective date of September 30, 2019 and find that it complies with section 52 of the *Act*. Therefore, I grant the landlord an order of possession pursuant to section 55 of the *Act*. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The remainder of the items the tenant applied for are only if the tenancy continued, as I have found that the tenancy is terminated, I dismiss the remainder of the tenants application.

Conclusion

The tenants monetary claim is dismissed with leave to reapply.

The remainder of the tenant's application is dismissed in its entirety without leave to reapply.

The Two Month Notice to End Tenancy for Landlords Use of Property dated July 17, 2019 with an effective date of September 30, 2019 is confirmed, it is of full effect and force. The tenancy is terminated. The landlord is granted an order of possession.

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 08, 2019

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Residential Tenancy Branch