



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL FFT MNDCT**

### Introduction

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

- An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49;
- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67;

Both the tenant and the landlord attended the application. The landlord was assisted by a certified interpreter. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

### Preliminary Issue – Unrelated Issues

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's Two Month Notice to End Tenancy for Landlord's Use ("Notice") was unrelated to the tenants' other issues and dismissed the unrelated issues with leave to reapply at the commencement of the hearing.

### Issue(s) to be Decided

Should the Notice be upheld or cancelled?

Can the tenant recover the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The month to month tenancy began on May 1, 2013. Rent was set at \$1,200.00 per month payable on the first day of each month. A security deposit of \$600.00 was collected which the landlord continues to hold.

The landlord provided the following testimony. He and his family live in a different municipality from where the rental unit is located. His daughter attends university and the rental unit is located 20 minutes away from the university. Currently, it takes the daughter at least 1.5 hours to get to university and another 1.5 hours to come home, taking a total of 3 hours away from the daughter's academic time. The landlord testified it would be more convenient for the daughter to live in the unit he owns close to the university. In evidence, the landlord provided a sworn affidavit from the daughter verifying the landlord's testimony. The landlord's daughter was not called as a witness in these proceedings.

The landlord further testified the daughter suffers from medical issues related to her vertebrae and legs that prevents her from being able to drive to school. The daughter must take a bus to university for these reasons. In evidence, the landlord provided copies of medical reports from doctors and orthopaedic surgeons to corroborate his testimony. The landlord also provided copies of the daughter's student card and verification from the university confirming her status as an undergraduate student.

On August 31, 2019 the landlord provided the tenant with a Two Month Notice to End Tenancy for Landlord's Use by posting it to the tenant's door. The tenant acknowledges receiving it the following day, on September 1<sup>st</sup>. The effective date noted on the Notice is October 31, 2019 and the reasons for issuing the Notice is 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 acknowledged during the hearing that he has not yet compensated the tenant with the equivalent of one month's rent for serving her with the Notice. He also

acknowledged the effective date of the Notice should be November 30<sup>th</sup> as October 30<sup>th</sup> would not provide a full two month's notice to end tenancy, based on the date of service.

The tenant testified that she has been given a multitude of different reasons by the landlord for ending the tenancy in the past. She has been told at different times the tenant's daughter was getting married, the landlord wanted to renovate, and that various members of the family were going to move in. She specifically questions the landlord's good faith in ending the tenancy, expressing that she believes the daughter will move in for a short period then the landlord will re-rent the unit to a different tenant.

In cross examination, the tenant questioned the landlord as to whether his daughter went travelling or was attending school. The landlord testified the daughter's health is not so poor as to prevent her from travelling. The tenant also questioned why the daughter needs to move into the rental unit in 2019 when she has been a student since 2013; to which the landlord responded that the daughter's academic endeavours were suspended in 2018 while she underwent surgery in 2017. The landlord testified he tried to end the tenancy in 2018 without serving a Notice to End Tenancy but the tenant did not move out pursuant to his verbal request.

### Analysis

I find the tenant was served with the Notice on September 1, 2019 and filed to dispute it on September 6, 2019. The tenant filed within the timeline of 15 days as required by section 49(8) of the *Residential Tenancy Act*.

Section 49 of the *Residential Tenancy Act* (RTA) allows a landlord to end a tenancy for "landlord's use of property." The RTA allows a landlord to end a tenancy under section 49, if the landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit.

*Residential Tenancy Branch Policy Guideline number #2* examines the issue of ending a tenancy for landlord's use of property. It notes 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.

This Guideline 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. (emphasis added)*

The tenant questioned the landlord's good faith based on her belief that the landlord had an ulterior motive of re-renting the unit after the tenant moved out. While the tenant may have reason to believe this is true, there is insufficient evidence that allows me to come to the same conclusion. The submission that she had been given different verbal reasons to end the tenancy in the past does not provide me with any reason to doubt the reason for ending the tenancy stated on the Notice. The landlord is required to establish whether the daughter is going to move into the rental unit.

The landlord testified his daughter lives at least an hour and a half away from the university she attends. This was not disputed by the tenant. Nor was the estimated commute time of 30 minutes by public transit from the rental unit to the university disputed. It is reasonable to conclude that the daughter would want to move closer to the university. The landlord has also provided compelling evidence to show that his daughter is attending the university and would find driving there physically challenging. Lastly, the sworn affidavit of the daughter corroborates the landlord's testimony that the daughter truly intends on moving into the rental unit herself. The evidence presented satisfies me that there is no ulterior motive on the part of the landlord to end the tenancy and that he truly intends on doing what is stated on it. As such, I uphold the landlord's Notice to End Tenancy.

The landlord acknowledges the Notice was received on September 1, 2019 and that the earliest effective date for the Notice would be November 30, 2019. I issue an Order of Possession to the landlord effective at 1:00 p.m. on November 30, 2019.

Section 51 of the *Act* requires that the landlord compensate the tenant with the equivalent of one month's rent for ending the tenancy pursuant to section 49. As this has not yet happened, the tenant is entitled to withhold rent for the month of November 2019.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on November 30, 2019**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 51 of the *Act*, the tenant may withhold the last month's rent and for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

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 01, 2019

---

Residential Tenancy Branch