



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL, FF

### **Introduction**

The hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy and to recover the fee for filing fee this Application for Dispute Resolution.

The Agent for the Tenant stated that on September 19, 2019 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in September of 2019 were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On October 31, 2019 the Tenant submitted another 3 pages of evidence to the Residential Tenancy Branch. The Agent for the Tenant stated that this evidence was personally served to the Agent for the Landlord on October 30, 2019 or November 01, 2019. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 02, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on September 30, 2019. The Agent for the Tenant stated that this evidence was received sometime in the middle of October of 2019. As the Tenant received the evidence, it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be set aside and is the Tenant entitled to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

The Agent for the Landlord and the Agent for the Tenant agree that this tenancy began in 2007 and that rent is due by the first day of each month.

The Agent for the Landlord and the Agent for the Tenant agree a Two Month Notice to End Tenancy for a Landlord's Use of Property was personally served to the Tenant on August 30, 2019. This Notice to End Tenancy declared that the Tenant must vacate the rental unit by October 31, 2019. This Notice to End Tenancy declared that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

In support of the Two Month Notice to End Tenancy the Agent for the Landlord declared that:

- the Landlord is 88 years old;
- the Landlord has recently had a stroke, although she does not know the date of the stroke;
- the Landlord's son, who is a physician, intends to move into the rental unit to care for his father;
- the son wishes to move into this particular rental unit because the Landlord intends to build a staircase between the rental unit and the Landlord's home;
- when a suite on the first floor of this complex became vacant in July of 2019 the Landlord's son was not planning on moving into the rental unit so he did not move into that suite nor was it offered to the Tenant; and
- on July 29, 2019 the Tenant was served with notice of a rent increase because at that time the Landlord's son was not planning on moving into the rental unit.

In support of this Application for Dispute Resolution the Agent for the Tenant stated that:

- there are 20 units in this residential complex;
- the Landlord's son could move into one of the other suites in the complex if he wishes to be near his father;
- the Landlord's son could move into the Landlord's suite if he wishes to be near his father;

- a suite became vacant on the first floor of this complex in July of 2019 and the Landlord's son could move into that suite if he wished to be near his father or that suite could have been offered to the Tenant;
- the Landlord does not have a permit to build stairs between the rental unit and the Landlord's home;
- it will take a year to complete the stairs; and
- on July 29, 2019 the Tenant was served with notice of a rent increase, effective November 01, 2019.

The Landlord submitted a document from his son, in which the son declares that he is a physician and that he intends to move into the rental unit for the purposes of taking care of the Landlord.

The Agent for the Landlord stated that if the Landlord is granted an Order of Possession, the Landlord would be willing to permit the Tenant to remain in the rental unit until December 31, 2019.

### Analysis

Section 49(3) of the *Residential Tenancy Act (Act)* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the testimony of the Agent for the Landlord and the evidence submitted by the Landlord, I find that the Landlord has grounds to end this tenancy pursuant to section 49(3) of the *Act*. I find that the Landlord's submission that his son intends to move into the rental unit for the purposes of caring for the Landlord is credible and I have no reason to discount the submission. I find that the written evidence of the son is very compelling.

In adjudicating this matter, I have placed little weight on the Tenant's submission that the Landlord's son could move into the Landlord's suite if he wishes to be near his father. The Landlord is not obligated to have his son move into his home, in its current configuration. The Landlord has the right to have his son move into a nearby suite, if that is the wish of the Landlord.

In adjudicating this matter, I have placed little weight on the Tenant's submission that there are 20 units in this residential complex and the Landlord's son could move into one of the other suites in the complex if he wishes to be near his father. The Landlord has the right to have his son move into a suite that meets the needs of the Landlord. In these circumstances, I accept the Landlord's submission that this rental unit meets the

needs of the Landlord because stairs can be built that connect it to the Landlord's home.

In adjudicating this matter, I have placed little weight on the Tenant's submission that a suite became vacant on the first floor of this complex in July of 2019 and the Landlord's son could move into that suite if he wished to be near his father or that suite could have been offered to the Tenant. I have placed little weight on this submission as I have no reason to refute the Agent for the Landlord's testimony that when this suite became vacant the Landlord's son had not decided to move into the rental unit.

In adjudicating this matter, I have placed little weight on the Tenant's submission that the Landlord does not have a permit to build stairs between the rental unit and the Landlord's home and it will take a year to complete the stairs. I have placed little weight on this submission because the Landlord is not required to build the stairs prior to his son moving into the unit. I find it reasonable for the son to move closer to the Landlord and then build the stairs.

In adjudicating this matter, I have placed little weight on the undisputed evidence that on July 29, 2019 the Tenant was served with notice of a rent increase. I find the Agent for the Landlord's explanation that at the time the notice of rent increase was served the Landlord's son was not planning on moving into the rental unit is a reasonable explanation.

After considering all of the information before me, I am satisfied that the Landlord's son intends, in good faith, to move into the rental unit. I therefore dismiss the Tenant's application to set aside the Two Month Notice to End Tenancy.

As the application to set aside the Notice to End Tenancy has been dismissed, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenant's application is without merit and I therefore dismiss his application to recover the fee for filing this Application for Dispute Resolution.

The Landlord and the Tenant are advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Landlord and the Tenant are also advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenant the equivalent of twelve

months rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

### Conclusion

I grant the Landlord an Order of Possession that is effective on December 31, 2019. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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 19, 2019

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Residential Tenancy Branch