



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

First Application: CNL-4M  
Second Application: CNL, FFT

### **Introduction**

This hearing dealt with two tenant applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49; and
- authorization to recover the filing fee for the second application from the landlord, pursuant to section 72.

The tenant and landlord E.W. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlords were served with the tenant's applications for dispute resolution via registered mail. I find that the landlords were served in accordance with section 89 of the *Act*.

### **Issues to be Decided**

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49 of the *Act*?
3. Is the tenant entitled to recover the filing fee for the second application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began approximately 30 years ago and is currently ongoing. Monthly rent in the amount of \$1,896.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant to the previous landlord. The subject rental property is one side of a duplex. The landlords purchased the duplex in December of 2019.

Landlord E.W. testified that she originally asked the sellers of the duplex for vacant possession, but the sellers did not want to deal with evicting the tenants and told landlord E.W. she could do what she liked after the purchase was completed. Landlord E.W. testified that she planned on moving into one half of the duplex and renovating the other half of the duplex and renting the renovated side out for rental income.

Both parties agree that on December 21, 2019 the tenant and the tenants of the other half of the duplex (the "neighbours") were socializing when landlord E.W. personally served the tenant with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the "Four Month Notice") and served the neighbours with a Two Month Notice to End Tenancy for Landlord's Use of Property.

Landlord E.W. testified that she planned on renovating the tenant's duplex and that the renovation work was so extensive that it required vacant possession of the subject rental property. Landlord E.W. testified that she planned on moving into the other side of the duplex.

The tenant testified that the proposed renovations do not require vacant possession.

The tenant testified that when he and his neighbours were served with the notices to end tenancy landlord E.W. mentioned that she planned on moving in.

Landlord E.W. testified that the neighbours asked the selling agent to ask her if they could receive the Four Month Notice instead of the Two Month Notice as they were elderly and could not move out within two months. Landlord E.W. testified that she felt bad for the elderly tenants and that it did not matter to her which side of the duplex she

moved into and which side was to be renovated so she served the neighbours with a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit and served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"). The Two Month Notice was posted on the tenant's door on January 26, 2020.

The Two Month Notice states the following reason for ending this tenancy:

- 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 testified that he received the Two Month Notice on January 27, 2020. The Two Month Notice with an effective date of March 31, 2020 was entered into evidence. The Two Month Notice is dated: 26/1201/2020.

Landlord E.W. testified that she changed her mind as to what side of the duplex she planned on moving into because she was trying to be kind to the elderly neighbours.

The tenant testified that he wants the Two Month Notice cancelled because it is not fair that the landlords switched the notices provided to himself and his neighbors based on his age. The tenant accused the landlords of discrimination based on age contrary to the B.C. Human Rights Code.

The tenant testified that he did not have any evidence suggesting that landlord E.W. did not plan on moving into the subject rental property and that landlord E.W. might plan on moving into the subject rental property.

### Analysis

Based on the testimony of both parties, I find that the landlord cancelled the Four Month Notice when she served the Two Month Notice on the tenant. The landlord testified that she served the tenant with the Two Month Notice because she decided to move into the subject rental property instead of renovating it. I therefore find that the Four Month Notice is cancelled and of no force or effect.

Based on the Two Month Notice entered into evidence and the testimony of both parties, I find that service of the Two Month Notice was effected on the tenant on January 27, 2020, in accordance with section 88 of the *Act*.

Residential Tenancy Policy Guideline 11 states that an arbitrator is permitted to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances. In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

I find that the tenant knew or ought to have known the date the Two Month Notice was signed should have read 26/01/2020 instead of 26/1201/2020. I find that the tenant is not unfairly prejudiced by amending the notice. Pursuant to section 68 of the *Act*, I amend the Two Month Notice to correct the month it was signed.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves or allow a close family member to move into the unit.

Policy Guideline 2A explains the 'good faith' requirement as requiring 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. Good faith means the landlord does not intend to defraud or deceive the tenant.

I find that there is sufficient evidence that the landlord honestly intends to move into the subject rental property. In making this finding, I have taken into consideration all of the testimony of each party and all of the documentary evidence provided for this hearing.

The tenant did not dispute the landlord's testimony that she plans on moving into the subject rental property. The tenant alleges that the reasons behind landlord E.W.'s choice to move into the subject rental property instead of the neighbour's side of the duplex, are contrary to the B.C. Human Rights Code. I do not have jurisdiction render a decision on legislation other than the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. I am not able to adjudicate a human rights complaint.

I find that the landlord has proved, on a balance of probabilities, that she intends on moving into the subject rental property.

I find that landlord E.W.'s change of heart regarding which side of the duplex she was going to move into was done in good faith, and that she honestly intends on moving into

the subject rental property. I find that the switch of the notices to end tenancy does not constitute an ulterior motive.

Based on the foregoing, I find that the tenant is not entitled to a cancellation of the Two Month Notice. Therefore, I dismiss the tenant's application.

When a tenant's application to dispute a landlord's notice to end tenancy is dismissed, section 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

After reviewing the Two Month Notice submitted into evidence by the tenant, I find that the amended Two Month Notice complies with section 52 of the *Act*. As a result, I find that the landlords are entitled to an Order of Possession. The Order of Possession will take effect on March 31, 2020, the effective date on the Two Month Notice.

For the information of both parties I note the following sections of the *Act*:

- Section 51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement
- Section 51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if
  - (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective at **1:00 p.m. on March 31, 2020**, which should be served 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: March 03, 2020

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Residential Tenancy Branch