



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated January 16, 2020 ("Two Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

The Tenant, S.R., and two agents for the Landlord, J.M. and M.T. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

### Issue(s) to be Decided

- Should the Two Month Notice be confirmed or cancelled?

- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of their \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the periodic tenancy began in the winter of 2017, but they could not be more specific than that. They agreed that the tenancy has a current monthly rent of \$1,850.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$900.00, and no pet damage deposit.

The Agent, J.M., said that Landlord is deceased and that:

Mr. [S.] in his will left properties to each of his children. One of the children was given this property. The child of the owner of the property wants to move into the suite. That is consistent with the right of the family member to evict the Tenants, if they want to move in.

The Tenant said that she is looking after her premature granddaughter, as her daughter needs some help. The Tenant said:

She lives close by, and sometimes I need her help for my shoulder injury. I need time to move. My daughter said, 'you have to stay close to me'. We were looking for something close by. If I can't find it, maybe she can move close by.

The Tenant said that her husband and son are in India and cannot get a flight out, because of Covid-19. The Tenant said she cannot find another place to live by herself, and she does not know when her son and husband will be able to return.

The Agent said:

Obviously, we appreciate the world is a different place today than it was a year ago. I don't know the particular circumstances of the person moving in. I think what we want is certainty more than anything. We found this process to be difficult, as the hearing was scheduled the day before they're supposed to be out of the place. They should have been out; they can't move out tomorrow. It's more complicated because of the spouse not being in the country. There is certainly uncertainty. Certainty in terms of them moving - they're not in a position to give certainty. Is two months sufficient?

The Tenant said:

I respect the owners; I know we have to find a place. But with my husband and son away, and I don't know when they can come back. Then they have to stay at home for two weeks when they get back. I can't do anything by myself until they come home. We will try; and I do respect that we have to move out as soon as they come home. We will move. We don't want to live here forever or for six months even.

The Parties said they would keep in touch and work together to find a solution.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49(3) of the Act sets out:

**49 (3)** A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I find that the Tenants' argument for cancelling the Two Month Notice is based on their personal circumstances, rather than on a remedy granted under the Act. Accordingly, I dismiss the Tenants' Application to cancel the Two Month Notice without leave to reapply.

I find that the Landlord is entitled to an Order of Possession; however, because of changes made to support renters and landlords during the state of emergency, most evictions are not currently allowed, and notices to end tenancy cannot be issued for most reasons, except in exceptional circumstances. Further, orders of possession cannot be enforced until after the state of emergency except under exceptional circumstances, such as:

- the tenant or a person permitted on the residential property by the tenant has done any of the following:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety of the landlord or another occupant;
  - put the landlord's property at significant risk;
- engaged in illegal activity that
  - has caused or is likely to cause damage to the landlord's property,
  - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property, and it would be unreasonable to wait for the state of emergency to end....

I find that none of the exceptional circumstances apply in this situation; however, a notice issued before March 30, 2020 can be a valid notice, and statutory timelines are in effect. If the notice to end tenancy was given before March 30, 2020, tenants may:

- Dispute the notice by making an application for dispute resolution,
- Accept the notice, and the tenancy will end.

After discussions with the Parties in the hearing, they both expressed understanding of the difficulties of the Tenants' situation, given the state of emergency. I also advised that an order of possession granted under section 55 of the Act will not be enforceable during the state of emergency; however, after the state of emergency ends, it may be filed in the British Columbia Supreme Court and enforced as an Order of that Court, if the Tenant fails to comply with the Order of Possession.

I find that the Two Month Notice complies with section 52 of the Act, as to form and content. Based on the evidence before me, I grant the Landlord an Order of Possession pursuant to section 55 of the Act, enforceable two days after service on the Tenants, after the state of emergency is over.

The Tenants are unsuccessful in their Application to cancel the Two Month Notice. I also decline to award them recovery of the \$100.00 Application filing fee.

Conclusion

The Tenants are unsuccessful in their Application, as they did not submit sufficient evidence to demonstrate a legal ground to cancel the Two Month Notice.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order**.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court, once the state of emergency has ended.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 1, 2020

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Residential Tenancy Branch