



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, MNDCT, FFT

### Introduction

The tenant filed an Application for Dispute Resolution on March 27, 2020 seeking an order to cancel the 'Two Month Notice to End Tenancy for Landlord's Use of Property' (the "Two Month Notice") and a monetary order for compensation. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on May 21, 2020.

Both parties attended the conference call hearing. I explained the process and offered each party the opportunity to ask questions. The tenants and the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The tenant stated that they delivered notice of the dispute via registered mail to the landlord. This included the documentary evidence that the tenant is presenting in this hearing. The landlord confirmed they received this information on April 2, 2020.

The tenants confirmed they received the landlord's evidence prepared in response to their claim. The landlord's agent sent this package to them via email. I am satisfied the tenant received the landlord's evidence and had adequate time to review the material prior to the hearing.

### Preliminary Matter

On their Application, the tenants made a claim for \$9,000.00. This is compensation for 12 months of rent, at \$750.00 per month. This is because they believe the landlord served the notice under false pretexts, and the landlord really was seeking to raise the monthly rent of the unit. For this, the tenant feels they are eligible for 12 months' rent amount due to "wrong faith, ulterior motive, defrauding and traumatization".

In the hearing, the tenant advised they were withdrawing their claim for this monetary amount. I confirmed this with the tenant, and they replied in the affirmative. I also made sure the landlord's agent was aware. I confirmed with the tenant that they were cancelling this claim on a voluntary basis and they confirmed this as well.

With the tenant's claim for monetary compensation withdrawn, I consider only the issues listed below.

#### Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel the Two Month Notice pursuant to section 49 of the *Act*?

Should the tenant be unsuccessful in seeking to cancel the Two Month Notice, is the landlord entitled to an order of possession pursuant to section 55(1) of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

#### Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant stated that there is a tenancy agreement in place between the parties, though they did not provide a document, stating it was an oral agreement. This is for the rent amount of \$1,200.00 per month, payable on the first day of each month. There was a security deposit of \$350.00 for the tenancy that started on April 1, 2014.

The landlord issued the Two Month Notice on March 16, 2020, for the tenancy to end on May 31, 2020. The landlord provided that the unit will be occupied by a close family member – this is the child of the landlord. They served the tenant with this document by leaving it with them, hand-delivered, with a witness observing that transaction. The tenant's signature appears on the 'Proof of Service' document the landlord provided to confirm service.

In a written statement dated May 12, 2020, the landlord gave the reason for issuing the Two Month Notice. This is for a close family member, along with their family, to occupy the rental unit. There is a "shortage of space" in the landlord's home now because the close member's

family lives with them. This brings the total number of people living in the landlord's home to ten people, with only four bedrooms.

The tenant desires to cancel the Two Month Notice. Their submission is that the landlord issued this notice because they wanted to increase the rent. This is based on past discussions. The tenant reviewed a matter from 2017 when the landlord stated they needed the unit for family, and then withdrew that plan. After that time, there was a rent increase.

In the hearing the tenant stated: "[they] stated if [they] can't raise the rent by \$300 [they] would give me another notice." The tenant maintains this Two Month Notice is really served because of the issue of rent increase.

In the hearing, the landlord set out the history of their family arriving and moving in with them into their home that is immediately above the tenant's rental unit.

In their written statement, the landlord provides that the issue of rent increase is the subject of another arbitration matter, and it does not impact the issue of why they served the Two Month Notice here. They presented their view of the issue with reference to the related sections of the *Act*. They also stated that prior to January 2020, when the issue of their needing the rental unit for additional family arose, they had a "healthy and working relationship" with the tenant.

### Analysis

Section 49(3) of the *Act* states that a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. This is to specify a date that is not earlier than 2 months after the date the tenant receives a Two Month Notice.

Section 49(8) of the *Act* states that within 15 days of receiving a Two Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the Two Month Notice was issued pursuant to section 49 and I accept the landlord's evidence that they served this document in person to the tenant on March 16, 2020. The tenant's signature appears on the 'Proof of Service' document the landlord provided, confirming this service.

When a landlord issues a Two Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

I find it reasonable for the tenant to know of the issue the landlord is facing with the number of people living in their unit. This is based on the length of time the tenant has lived in the unit, which goes back to 2014, and the landlord's statement that there was "healthy and working relationship" in place.

I give more weight to the landlord's account that sets forth the issue they are faced with, one that necessitated their issuing the Two Month Notice. I am not persuaded by the tenant's submissions that the discussions on rent increases in the past cross over into the current needs of the landlord.

The tenant gave testimony on a rent increase that the landlord added in 2017. I give this evidence little weight and find it does not establish a pattern of the landlord trying to impose rent increases illegally as the tenant submits here.

I find the tenant's submission is, in the main, their conjecture that the landlord is trying to increase the rent by forcing an eviction. The tenant's statements in the hearing on discussions they had with the landlord are outweighed by the submissions of the landlord that set out a real need to have the unit for family members. The *Act* allows a landlord to end a tenancy for this reason, provided they have undertaken to do so in the correct manner with due regard to the rights of the tenant.

While the tenant maintains the landlord acted in bad faith when issuing the Two Month Notice on March 16, 2020, the evidence they present does not make this plain as fact. The landlord stated that the issue of rent increase is the subject of another arbitration, and that is the appropriate forum to air that issue. I find the landlord issued the notice for a valid, legally acceptable reason.

For these reasons, I dismiss the tenant's application to cancel the Two Month Notice. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Two Month Notice is dismissed and I am satisfied it complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find the Two Month Notice complies with the requirements for form and content with each detail. These are: the signature and date of the landlord; the address of the rental unit; the effective date of the notice (i.e., the move out date); and the grounds for ending the tenancy. The document itself is in the approved form as specified in the *Act*.

Given my finding that the Two Month Notice complies with the requirements of form and content, the landlord is entitled to an order of possession on the effective date.

Conclusion

For the reasons outlined above, I dismiss the tenant's application for a cancellation of the Two Month Notice, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. 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 *Act*.

Dated: June 9, 2020

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Residential Tenancy Branch