



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **CORRECTED DECISION**

Dispute Codes      CNL, MNDCT, DRI, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought the following relief:

- an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use, issued on September 15, 2020 (the "Notice");
- disputing a rent increase;
- monetary compensation from the Landlords; and,
- recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on December 4, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter—Matters to be Decided

The parties confirmed the Landlords issued three 2 Month Notices to End Tenancy for Landlord's use, firstly the September 15, 2020 Notice which was the subject of the

Tenant's original Application; secondly, a 2 Month Notice issued on October 27, 2020 with an effective date of December 31, 2020; and finally, a 2 Month Notice issued on October 29, 2020. The Tenant included these notices in her materials. The Landlords' representatives confirmed it was his understanding the hearing would deal with all three notices.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

I find the Landlord would have reasonably anticipated the Tenant sought to cancel all three Notices, as such I amend the Tenant's Application to include such claims.

The Tenant also sought monetary compensation from the Landlord pursuant to section 51(2). As the tenancy has yet to end, I find such an application to be premature. I therefore dismiss, with leave to reapply, the Tenant's monetary claim for compensation pursuant to section 51(2) of the *Act*.

During the hearing the parties confirmed that the Tenant overpaid rent of \$228.00 pursuant to an illegal rent increase. The parties further confirmed that this \$228.00 was refunded to the Tenant. The parties agreed that the monthly rent is \$742.00, not \$761.00. I find this matter has been resolved by agreement between the parties and as such I make no findings of fact or law with respect to this claim.

#### Issues to be Decided

1. Should the September 15, 2020 Notice be cancelled?
2. Should the October 27, 2020 Notice be cancelled?
3. Should the October 29, 2020 Notice be cancelled?
4. Should the Tenant recover the filing fee?

## Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlords' representative presented their evidence first.

J.X. confirmed that this tenancy began January 1, 2016. ~~Monthly rent was originally \$761.00.~~ A copy of the residential tenancy agreement was provided in evidence. The figure \$748.00 was typed in the area indicating the monthly rent amount. This figure was crossed out in pen and the figure \$742.00 was written above. The tenancy agreement further indicated that the Tenant also paid a \$350.00 security deposit.

J.X. stated that although the Landlords issued the September 15, 2020 Notice, indicating their child would move into the rental unit, the Landlords did not wish to proceed with this notice. Documentary evidence submitted by the Landlords indicates the Landlord, D.P. was offered a job in another country on September 28, 2020. As a result of this job offer, the Landlords decided to move and sell the rental property. J.X. testified that the Tenant was informed that the Landlords wished to withdraw the September 15, 2020 Notice. This was confirmed in text communication between the parties.

J.X. also testified that the October 27, 2020 Notice was completed incorrectly as it was signed by the Landlords' agent, and not the Landlords. Again, J.X. confirmed the Landlords did not wish to proceed with the October 27, 2020 Notice. J.X. noted that the October 29, 2020 Notice was essentially the same as the October 27, 2020 Notice in terms of the reasons for ending the tenancy and the effective date.

J.X. testified that the Landlords wished to end the tenancy pursuant to the October 29, 2020 Notice. This Notice indicated that the rental unit had sold, and the purchasers asked for vacant possession. A copy of the contract of purchase and sale was provided in evidence, confirming that the closing date for the purchase is January 16, 2021. Also provided in evidence before me was a letter from the purchasers, dated October 26, 2020, wherein they ask the Landlords to end the tenancy and request vacant possession of the rental unit as they intend to occupy the unit.

In response to J.X.'s testimony and the Landlord's evidence, the Tenant testified as follows. She stated that she has no reason to believe the rental unit has not sold, nor does she have any reason to believe that the purchasers will not occupy the rental unit. She confirmed that after receiving the prior two notices, she was suspicious of the Landlords' intentions. She further stated that as they attempted to withdraw the prior two notices, she was not certain whether they would change their minds with respect to the sale. The Tenant confirmed she understood she was at liberty to apply for monetary compensation pursuant to section 51(2) if the Landlords or the purchasers do not use the rental unit for the stated purpose.

The Tenant sought a declaration that her monthly rent is \$742.00. She also confirmed the Landlords have not provided her with a free months' rent pursuant to the October 29, 2020 Notice.

### Analysis

As previously noted, when a tenant applies to cancel a notice to end tenancy, it is the landlord who bears the burden of proving the reasons for issuing the notice.

The Landlords' agent confirmed the Landlords do not wish to end the tenancy for the reasons set forth on the September 15, 2020 Notice as the rental unit has sold. I was not provided any evidence to support a finding that this notice should be upheld. As such, I cancel the September 15, 2020 Notice.

I find the October 27, 2020 Notice should similarly be canceled. Section 52 of the *Act* provides that a notice to end tenancy must be signed by the Landlord. I accept J.X.'s testimony that the real estate agent signed the October 27, 2020 notice, and as she is not a landlord for the purposes of the *Act*, she was not authorized to end the tenancy. I therefore grant the Tenant's request to cancel the October 27, 2020 Notice.

I find the Landlords have met the burden of proving that the October 29, 2020 Notice should be upheld. I am persuaded by J.X.'s testimony, as well as the documentary evidence before me that the Landlords have sold the property. I am also satisfied the purchasers have requested vacant possession of the rental unit as they intend to occupy the rental property. I was not provided with any evidence which would suggest the October 29, 2020 Notice was not valid, nor any evidence that it was not issued in good faith. Notably, the Tenant conceded that she had no reason to believe the October 29, 2020 Notice was not valid. I therefore dismiss the Tenant's request for an

order canceling the October 29, 2020 Notice. The tenancy shall end in accordance with the October 29, 2020 Notice on December 31, 2020.

Pursuant to section 55 of the *Act*, the Landlords are entitled to an Order of Possession effective December 31, 2020. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court.

Pursuant to section 51(1) of the *Act*, the Landlords must provide the Tenant with a free months' rent. I find, based on the evidence before me and the submissions of the parties that monthly rent is \$742.00. Although the Tenant paid a higher rent for a period of time, the parties agreed she should be reimbursed any overpayment such that the rent remains \$742.00. As she has already paid the December 2020 rent, the Landlords must pay her the sum of \$742.00 on or before December 31, 2020.

Documentary evidence confirms the Landlords offered to refund the \$100.00 filing fee. The Landlords' agent confirmed at the hearing before me that the Landlords were agreeable to this. As such, the Landlords shall also pay the Tenant an additional \$100.00 for a total payment of **\$842.00**.

While I am confident (based on the Landlords' agent's assertions during the hearing) that the Landlords will pay the Tenant as required, in the event the Landlords fail to do so, I grant the Tenant a Monetary Order in the amount of **\$842.00**. The Tenant shall make no use of this Order if the \$842.00 payment is made by December 31, 2020. Should payment not be forthcoming the Tenant may file and enforce the Monetary Order in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Tenant's request for an Order canceling the September 15, 2020 and October 27, 2020 Notices to end tenancy is granted.

The Tenant's request for an Order canceling the October 29, 2020 Notice is dismissed. The tenancy shall end on December 31, 2020 and the Landlord is granted an Order of Possession.

The parties resolved the matter of the rent increase by agreement and the Tenant was provided a \$228.00 reimbursement for any overpayment of rent from January 2020 to December 2020. I record this agreement pursuant to section 64(3)(c) and find that the Tenant's rent is \$742.00 per month.

The Tenant's request for monetary compensation from the Landlord is granted in part. The Tenant is entitled to a Monetary Order in the amount of **\$842.00** representing a free month's rent pursuant to section 51(2) and recovery of the filing fee.

The Tenant's request for monetary compensation pursuant to section 51(2) is dismissed with leave to reapply.

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: December 09, 2020

Corrected: January 6, 2021

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Residential Tenancy Branch