



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, CNR, OLC, MNDCT, RP, ERP, FFT

### Introduction

On November 5, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking a repair Order pursuant to Section 32 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 30, 2020, the Tenant amended his Application seeking to cancel a Ten Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Act*, seeking an emergency repair Order pursuant to Section 62 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with J.F. attending as an agent for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by hand on November 12, 2020 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing and evidence package. As such, I am also satisfied that the Landlord was served with the Tenant's evidence. Thus, this evidence was accepted and considered when rendering this Decision.

The Tenant advised that he served the Landlord the Amendment by hand on November 30, 2020 and the Landlord confirmed receipt of this package. Based on this undisputed

testimony, I am satisfied that the Landlord was served with the Tenant's Amendment package.

The Landlord advised that he served the Tenant with the Landlord's evidence by hand about three weeks ago, and the Tenant confirmed receipt of this evidence. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was served in accordance with Rule 3.15 of the Rules of Procedure. As such, this evidence was accepted and considered when rendering this Decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property and possibly the Ten Day Notice to End Tenancy for Unpaid Rent, that his other claims would be dismissed, and that he is at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 15, 2009 and is currently a month-to-month tenancy. The parties could not agree on the amount of rent per month; however, it was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

Both parties agreed that the Notice was served by hand on October 23, 2020. The reason the Landlord served the Notice is because "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 effective end date of the tenancy was listed on the Notice as December 31, 2020.

The Landlord advised that he needs the rental unit because his kids are getting older and that they need space. As well, he intends to turn a portion of the rental unit into a recreation room for his kids. In addition, it is his intention to have his parents move into the rental unit in the near future and it would not be possible for them to quarantine without a separate space. Finally, he stated that his wife has suffered from medical complications and it is necessary to have the rental unit back for their use and for her peace. He submitted documentary evidence to support his position that he will be occupying the rental unit for his use and for the use of his close family members.

The Tenant advised that the Landlord had stated to him in the past that he needed the Tenant's parking spaces and that he would turn the rental unit into a recreation room. He stated that the Landlord has two bedrooms downstairs that are being used for storage that the Landlord could use for extra space instead. He submitted that the Landlord has lots of space upstairs and the Landlord's parents have stayed up there before. He also stated that the Landlord advised that his son would be moving away for college. Finally, he stated that he does not understand the Landlord's wife's medical condition or how it relates to the reason on the Notice.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

When reviewing the totality of the evidence before me, I find it important to note that the Landlord has provided testimony and submitted documentary evidence corroborating that him and his family will be occupying the rental unit once vacant. I do not find that there is any evidence to conclude that the Landlord has another purpose or an ulterior motive for ending the tenancy with this Notice. As such, I am satisfied that the Landlord has substantiated that he intends to use the rental unit for the stated purpose and as such, there are no grounds to cancel the Notice.

As the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on October 23, 2020 complies with the requirements set out in Section 52, I uphold the Notice, I dismiss the Tenant's Application, and I find that the Landlord is entitled to an Order of Possession that is effective **at 1:00 PM on January 31, 2021 after service of this Order** on the Tenant, pursuant to Sections 52 and 55 of the *Act*.

Both parties were reminded of the one-month compensation requirement that is associated with serving this Notice. As well, both parties were reminded of the 12-month compensation requirement should the Landlord not use the property for the stated purpose.

As an Order of Possession was granted on the Two Month Notice to End Tenancy for Landlord's Use of Property, it was not necessary to consider the merits of the 10 Day Notice to End Tenancy for Unpaid rent.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the filing fee.

Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective **at 1:00 PM on January 31, 2021 after service of this Order** 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: January 28, 2021

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Residential Tenancy Branch