



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, MNDCT, MNRT, LRE, OLC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) pursuant to section 49;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. A.E.R. attended the hearing via conference call and provided testimony.

Extensive discussions took place at the outset in which the naming of the landlord was addressed. Both the named landlord, D.A.L. and A.E.R. stated that as of March 1, 2021 the possession of the property was transferred as the sale of it had been completed. The tenant, P.G. confirmed after extensive discussions that despite her filing against D.A.L., she has acknowledged that her new landlord is A.E.R. On this basis, the tenants' application is amended to the new landlord's name, A.E.R. instead of D.A.L. by consent of all parties present.

At the outset, the tenants' application was clarified. Discussions with all parties confirmed that the tenants primary request to cancel the notice to end tenancy for landlord's use against the new landlord, A.E.R. was unrelated to the remaining requests against the old landlord, D.A.L. On this basis only the tenants' requests to cancel the notice to end tenancy (CNL) and the request for recovery of the filing fee (FF) shall proceed. The tenants remaining issues as they are unrelated are severed and dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 month notice?

Is the tenant entitled to recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2015 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated September 4, 2015. The monthly rent was \$1,000.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$500.00 was paid.

Both the originally named landlord, D.A.L. and A.E.R the new landlord confirmed that the completion of the sale was made on March 1, 2021. Both old and new landlords confirmed that A.E.R. had completed a "Tenant Occupied Property- Buyers Notice to Seller for Vacant Possession" form dated December 24, 2020 requesting vacant possession of the rental unit as the new owner intends to occupy the rental property. Both parties confirmed that the old landlord, issued a 2 month notice to end tenancy dated December 27, 2020 as a result.

Both the tenants and the landlords confirmed that the landlord, D.A.L. served the 2 month notice dated December 27, 2020 to the tenants. The 2 month notice states in part that the effective end of tenancy date is February 28, 2021 and the reason selected on the notice:

All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing, to give this Notice because the

purchaser or a close family member intends in good faith to occupy the rental unit.

The 2 month notice provides the name and address of the purchaser as A.R.

The landlord/purchaser, A.R. provided undisputed testimony during the hearing that he has already moved into the main house and that the “rental unit” will be occupied by the father and mother of the landlord or the landlord’s spouse.

The tenants dispute the landlord’s notice stating that they need extra time due to health issues and not having any money to move. The tenants argue that the old landlord, D.A.L. had notified her verbally that the 2 month notice had been cancelled. The tenants repeatedly argued that the 2 month notice was invalid. The landlord disputed the tenants claim that the 2 month notice was cancelled. The tenants were unable to provide any supporting evidence of the previous landlord cancelling the notice. The tenants stated that she had submitted an audio recording confirming the agreement. The landlord stated that a review of the audio recording does not confirm an agreement. A review of the audio recording was done and found to not reveal any agreement or notice by the landlord to cancel the 2 month notice. The audio recording reveals that the original landlord discussing with the tenants an attempt to re-negotiate the terms of the 2 month notice and the details concerning the sale of the property. The tenant then stated during the hearing that no agreement was made by the landlord to cancel the 2 month notice.

The tenants also argued that the previous landlord had promised that the sale would allow for the continuation of the property being rented to the tenant. The landlords argued that such a promise cannot be made by the previous landlord as it did not form part of the original sales agreement as per the request for vacant possession.

### Analysis

Section 49 of the Act states that a landlord may end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds. The purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

In this case, I accept the undisputed evidence of both parties and find that the landlord/seller served the tenant with a 2 month notice dated December 27, 2020 after receiving in writing, the completed “Tenant Occupied Property- Buyers Notice to Seller for Vacant Possession” form dated December 24, 2020 requesting vacant possession of the rental unit as the new owner intends to occupy the rental property. The 2 month notice appears to be valid and the details of which were not disputed by the tenant. The tenant further has not questioned the good faith intent of the landlord/purchaser’s intent to have his parents/ spouses parents occupy the rental unit. Despite the tenant’s claims regarding her personal health and financial status, I find that insufficient evidence has been provided that would justify setting aside the 2 month notice. As such, the tenant’s application is dismissed without leave to reapply. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenant as the effective end of tenancy date has now passed.

### Conclusion

The tenant’s application is dismissed without leave to reapply.  
The landlord is granted an order of possession.

The tenant must be served with the order of possession. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 29, 2021