



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, OLC, CNL

### Introduction

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

- 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The landlord was represented by an agent. The agent acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentary evidence for this hearing. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should a specific order be issued to compel the landlord to comply with the *Act*, regulation, or tenancy agreement?

Is a determination regarding a rent increase required?

### Background and Evidence

The landlord's agent gave the following testimony. The agent testified that the landlord's son has a serious drug addiction that is threatening his health and his marriage. The agent testified that to correct both issues, the landlord wants his son to move into the

subject unit. The agent testified that it would be more cost effective than to pay for “rehab”, and that with the family close by it would provide the support he needs. The agent testified that English is not the landlords first language and that he did not explain the situation to the tenant correctly which has caused this misunderstanding. The agent testified that the six members of the family are not moving into to the one-bedroom suite but rather the landlord’s son will be moving in and the rest of the family will remain in the three-bedroom unit upstairs. The agent testified that the landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on January 1, 2021 for the following reason:

- *The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) of the landlord or the landlord’s spouse...*

The agent testified that the parties had a verbal agreement about rent payable for over three years and only after the tenant was issued a notice to end tenancy has the tenant brought up the issue. The agent requests an order of possession.

The tenant gave the following testimony. The tenant testified that he was told by the landlord that the entire family wished to move into the one-bedroom unit. The tenant testified that on January 1, 2018 the landlord demanded that he pay an additional \$120.00 cash to him each month for the rent. The tenant testified that he didn’t realize that was incorrect until January 2020 when a friend pointed it out to him. The tenant testified that he decided to leave it alone and didn’t want to lose his housing. The tenant now seeks the recovery of the \$120.00 for 40 months for a monetary order of \$4800.00. The tenant testified that he thinks he should be able to stay as he is unable to afford anything else.

### Analysis

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 arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

### Notice to End Tenancy

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the “good faith requirement” as follows.

*Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.*

*A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:*

*a Notice to End Tenancy at another rental unit;*

*an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or*

*a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.*

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

The landlords' agent gave clear concise and credible testimony. She provided details as to the logistical and financial benefits for the landlord's son to move into the unit to address his addiction issues as well to attempt to salvage his marriage. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. I find that the notice complies with section 52 of the Act in form and content. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The Notice remains in full effect and force. The landlord advised that they are content with having the notice take effect at 1:00 p.m. on April 30, 2021; the order of possession reflects that. The landlord must provide the tenant one months rent as compensation per section 49 of the Act.

### Rent Increase

The landlords agent testified that although the landlord did not use the correct forms or amount to increase the rent, there was a verbal agreement in place with the parties that was accepted and paid and only disputed when a notice to end tenancy was issued.

The tenant testified that he has recordings that support the increases were illegal and that he was forced to pay them.

Residential Tenancy Branch Rules of Procedure 3.10.5 addresses the issue before me as follows:

### 3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

**Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.** Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. **If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.** If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15. Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

The digital recordings the tenant submitted could not be opened, viewed or heard by the landlord or myself. In addition, the tenant did not confirm that the landlord had been able to access them as required and noted above. As a result, I am unable to consider them. In addition, the tenant testified that he was given an illegal rent increase on January 1, 2018. The tenant testified he didn't know it was illegal until January 2020 but was forced to pay the extra \$120.00 per month or lose his home. However, even with that knowledge, the tenant waited 13 months before disputing the rent increase and only because he was given a notice to end tenancy. I find that the tenant failed to provide sufficient proof that she was under duress or forced by the landlords to pay a higher amount of rent. I further find that the parties came to a mutual agreement for the new rent payable on January 1, 2018 and that the tenant accepted and paid that amount for over three years. Based on the above, I find that the tenant is not entitled to the recovery of any rent paid, accordingly; I dismiss this portion of his claim.

The tenant has not been successful in his application.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenants' application is dismissed in its entirety without 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: April 15, 2021

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Residential Tenancy Branch