



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPC OPL MNDC FF  
Tenant: CNC CNL OLC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 27, 2021.

The Tenant was present at the hearing with two advocates. One of the Landlords was present at the hearing. Both sides provided affirmed testimony.

Both parties confirmed receipt of each other's application packages, amendments and evidence. Neither party took issue with the service of these documents and both parties were ready to proceed with all evidence. The Landlord confirmed receipt of the Tenant's initial application and Notice of Hearing where she applied to cancel the initial 1 Month Notice to End Tenancy for Cause (1 Month Notice), as well as multiple amendment packages, including adding her amendment to cancel the 2 Month Notice to End Tenancy for Landlord's Use (2 Month Notice), a request for the Landlord to comply with the Act, adding two advocates as participants, and cancelling a second 1 Month Notice for Cause. The Landlord did not take issue with service of these documents, or any of the attached evidence.

The Tenant confirmed receipt of the Landlord's application, Notice of Dispute Resolution proceeding, and evidence package on or around March 17, 2021. The Tenant also confirmed receipt of a second evidence package from the Landlord in person on April 16, 2021. The Landlord stated that this package could not be served sooner because it contained copies of a new tenancy agreement, which was just entered into. The Landlord stated it supports his basis for the 2 Month Notice, and his intentions. The Tenant was asked if she had any concerns with either the service methods or service timelines, and she did not raise any issues or voice any concerns.

Both parties were willing to accept and address all evidence submitted and exchanged leading up to the hearing. As neither party appeared prejudiced by the timing of the service, and given both parties were willing and able to proceed to discuss the evidence, I find all packages were sufficiently served for the purposes of this proceeding, pursuant to section 71(2)(b).

### Preliminary and Procedural Matters

Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”), some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on both applications with the exception of the following grounds:

- to cancel a 1 Month Notice to End Tenancy for Cause
- to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property

Further, since the Landlord’s application for an order of possession based on these Notices is related, it will also be considered in this decision.

### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord’s 2 Month Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to have the Landlord’s 1 Month Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

Both parties provided testimony during the hearing with regards two different 1 Month Notices to End Tenancy for Cause (only the first of which was provided by either party into evidence) as well a 2 Month Notice to End Tenancy for Landlord’s Use. However, in

this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether or not the tenancy will continue or end. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings. Given that my decision hinges on the 2 Month Notice, I will focus on this evidence and testimony.

The Tenant does not recall when she received the 2 Month Notice but confirmed she received it around February 28, 2021. The Landlord stated he posted a copy to her door on February 25, 2021, and also sent a copy by registered mail on February 22, 2021. It appears the Tenant applied to cancel the 2 Month Notice within 15 days of receipt of the Notice, by March 11, 2021. The Landlord issued the Notice for the following reason:

*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).*

*Below this ground, the Landlord indicated that the rental unit will be occupied by "the Landlord or the Landlord's spouse."*

In the hearing, the Landlord was asked to explain why the Notice was issued, and he stated that he and his wife recently bought this house, and took possession on January 15, 2021. The Landlord stated that this house consists of an upper rental unit, and a lower, unpermitted suite which the Tenant rents. The Landlord stated that the Tenant has rented this suite for many years, and as a result, she has accumulated a large volume of personal affects, and belongings, such that it is not a healthy or safe living environment. The Landlord acknowledged issuing a 1 Month Notice on or around January 20, 2021, for one reason, and another 1 Month Notice on March 25, 2021, for a different set of reasons. The Landlord acknowledged that he put a lot of pressure on the Tenant to clean up right around when he was to take possession. However, he denies that the 1 Month Notices are related to the 2 Month Notice. The Landlord asserts the 1 Month Notices were to try and get the Tenant to clean up, and make the unit less hazardous in the interim.

The Landlord explained that it was always his intention to move into the property, but he acknowledged his initial plan was to wait until June to take over the entire house. The Landlord stated that he is aware there are multiple issues with the house, mice/rats, mold, and plumbing/drainage issues. The Landlord stated that the Tenant upstairs was also given a 2 Month Notice, and they moved out sometime in early March 2021. The

Landlord stated he is not unfairly targeting this tenant, as he has issued 2 Month Notices to cover both units in the house, given he wants use of the whole house. The Landlord stated that their plan is to move from where they currently live, in Duncan, to live in Nanaimo at this house. The Landlord stated that they had already began packing and moving, and they plan on using the entire house as part of their living arrangements.

The Landlord acknowledged that the lower suite is not accessible through the interior of the house, but he stated he will use the lower unit as additional living space as well as for dry/ secure storage for many of his belongings. The Landlord stated the upper unit is simply not big enough to fit all of his items, which is why his intention was always to take over the whole house. The Landlord noted that the other storage on the lot is not heated and properly safe from the elements, so he needs both the upper and the lower units to house all his possessions.

The Landlord explained that he is a heavy equipment operator and will fly to Fort McMurry for periods of time, then he comes home for his time off. The Landlord stated that this same work arrangement will continue after he moves to this house in Nanaimo, as he has to fly to work every couple of weeks regardless of where he lives. The Landlord provided proof of employment in his evidence. The Landlord acknowledged that, in the past, he completes work and improvements on his primary residence while he lives in it, as a side hobby or project when he has days off from his full-time equipment operator job.

The Landlord stated that he has already signed a tenancy agreement with prospective tenants at his house in Duncan. A copy of this tenancy agreement was provided into evidence. The tenancy agreement was signed by all parties by April 15, 2021. The Landlord provided a copy of an email money transfer, dated April 15, 2021, for \$3,300.00, which is the security deposit (\$1,200.00) plus first month's rent (\$2,100.00). This email money transfer is from the Tenant as listed on the tenancy agreement and was sent to the Landlord's account.

The Landlord stated that he will continue to move things into the upper suite at his Nanaimo home, and once the Tenant moves out, he will be able to move things downstairs to also occupy that space.

The Tenant feels that the Landlord has not issued this 2 Month Notice in good faith, as he appears to be trying everything he can to get her out, ever since he bought the house. The Landlord denies this and states the 1 Month Notices were to get the Tenant

to clean up and maintain a safer living environment in the interim, and the 2 Month Notice was to take over the whole house for their occupation. The Tenant stated that even a few days prior to the Landlord taking ownership of the house, he came to do a "meet and greet" and at that time he did an impromptu inspection. The Landlord and the Tenant had multiple conversations about issues with the rental unit, potential repairs, and clean ups. The Tenants advocates acknowledged that the Tenant has a hoarding issue, and that this process has not been easy for her, especially the short timelines given by the Landlord to tidy up. The Tenant stated she was given the first 1 Month Notice a mere 5 days after the Landlord took possession of the unit, and the relationship became strained following that.

The Tenants advocates argued that they do not feel the Landlord should be able to use this rental unit for storage as a means to evict the Tenant. The Tenants advocates also indicated that they believe the Landlord is likely trying to evict the Tenant so that he can renovate and make money, either by flipping or re-renting at a higher rent.

The Tenant feels the Landlord has not given proper Notice of Entry when he wants to come, or do repairs, and the Tenant feels the Landlord does not take her rights seriously. The Tenant notes that the Landlord initially tried to get her to sign a new tenancy agreement once he took ownership with some changed terms. The Tenant also stated that the Landlord has blamed her for water damage, mold issues, rodent issues, and poor maintenance when it was all pre-existing before she moved in many years ago. The Tenant stated that the Landlord also told her when he first met her that he might renovate and flip the house, as he has done this in the past. The Tenant also feels the Landlord is unfairly asking her to pay for compensation for things that are not her fault.

The Tenant stated she has acted in good faith the whole time over the years living there, and has always reported issues to the previous owners, tolerated shortcomings in the building, agreed to meet with the current Landlord's before they took ownership, and didn't complain when the Landlord asked to enter her unit for a viewing. The Tenant asserts she has cleaned up many of the safety issues and her excessive amount of belongings that the Landlord took issue with in the first place.

The Tenant provided typed transcripts of a few conversations with the Landlord, including that he had indicated he would be renovating the suite where the Tenant was living in order to make money, and potentially sell the house down the road. The Landlord denies saying this, and said he had always planned on issuing a 2 Month Notice so that he could move in, use the space for himself, and slowly address some of

the general maintenance issues, such as mold, poor drainage, yard maintenance etc. The Landlord denies that he plans to re-rent the space and asserts he wants this entire house for himself. The Landlord asserts he has a right to fix up his house while he lives in it, as long as he lives in the house for at least 6 months.

The Tenant asserts the Landlord told her that he has a business where he and his wife fix houses up, sell them, and then move to their next project. The Landlord denied portraying it this way, and asserts he always uses his houses as his primary residence, and only works on the house itself when he has time, on his days off from his primary heavy equipment operator job.

In the Tenants typed transcripts she also cites several conversations with both the past and present Landlord about general repair and maintenance issues with the house, moisture problems. The Tenant also notes that she and the Landlord had an increasingly tense relationship over January and February 2021. The Landlord explained that he had expressed his dissatisfaction over the Tenants hoarding, the fire risks, and the exacerbation of rodent issues.

The Tenant pointed out that the Landlord has completed his proof of service for a 1 Month Notice in an inaccurate manner. More specifically, the Tenant noted that in the Proof of Service document uploaded by the Landlord, he states he served the 1 Month Notice to the Tenant with a witness, on January 20, 2021. The Landlord indicated this document was signed on January 20, 2021. However, the Tenant pointed out that the proof of service form he used has a creation date of March 2021, which means it is not possible for the Landlord or the witness to have signed that proof of service on January 20, 2021, given that particular form had not been put on the RTB website at that time. Although the Tenant does not dispute the Landlord served the 1 Month Notice as he states, she feels this is a dishonest way to complete the proof of service form. The Tenant feels this impacts the Landlord's overall credibility.

The Landlord did not directly comment on how his witness could have signed the form prior to the creation of the form itself.

### Analysis

Based on the evidence and testimony before me, I make the following findings:

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that they intend in good faith to occupy the unit (as indicated on the 2-Month Notice).

The Tenant is alleging that the Landlord has not issued this 2-Month Notice in good faith and it was issued because the Landlord wants to “renovict” her, and make money by re-renting or selling for a profit.

Once the Landlord’s good faith intentions are called into question, the burden of proof rests with the Landlord to demonstrate that they, in good faith intend to accomplish the stated purpose on the Notice. I note that *Policy Guideline #2A - Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member* states the following:

## **B. GOOD FAITH**

*When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*

*Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.*

*[...]*

*The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.*

## **C. OCCUPYING THE RENTAL UNIT**

*Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see also: Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that*

*“occupy” means “to occupy for a residential purpose.” (See for example: Schuld v Niu, 2019 BCSC 949) The result is that a landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.*

### **6-month occupancy requirement**

*The landlord, close family member or purchaser intending to live in the rental unit must live there for a duration of at least 6 months to meet the requirement under section 51(2).*

### **Reclaiming a rental unit as living space**

*If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room, or using a carriage home or secondary suite on the residential property as a recreation room.*

I have reviewed the totality of relevant evidence and testimony. I first turn to the Tenant's assertion that the Landlord ought to have reduced credibility due to the manner in which he completed the proof of service document for the 1 Month Notice. I note the Landlord did not speak directly to this point and how it could be possible for his witness to sign a form on a date which predated the forms existence. I agree that this is odd, and appears to show that the Landlord completed the proof of service in an inaccurate or misleading manner, as he was preparing for this hearing. As a result, I have afforded that document little to no weight in terms of its intended evidentiary value.

With respect to the impact on the Landlord's overall credibility, I have considered this anomaly within the context of his overall demeanor in the hearing, as well as the overall consistency and reliability of his other statements, and documents. There appears to be little to no evidence there are any other meaningful issues with his other material documentation which would otherwise call into question his overall credibility. At the hearing, I found the Landlord provided clear, compelling, and articulate statements, and



overall I found his testimony to be reliable. Further, I do not find there is sufficient evidence to show were issues with his other documentary evidence such that that evidence ought to be excluded, afforded less weight, or that it would otherwise reduce his overall credibility.

In summary, I find the Landlord's proof of service document is not reliable, but overall, I found his other statements and evidence had sufficient veracity as to render them reliable. I note that some of the other material documentation provided by the Landlord includes a signed employment letter, on company letterhead to corroborate his employment assertions, a signed tenancy agreement for his other residence, complete with clear evidence of an e-transfer payment to accompany that agreement and its inception.

Next, I turn to the merits of the 2 Month Notice, and whether or not the Landlord has sufficiently demonstrated his good faith intentions.

I accept that the Landlord recently purchased this house, around January 15, 2021. I also accept that it consists of an upper rental unit, and a lower, unpermitted rental unit, which is in disrepair. I note the Landlord has issued two different 1 Month Notices, alongside this 2 Month Notice to the Tenant at the lower rental unit. The Landlord also gave a 2 Month Notice to the Tenant in the upper unit, so that he could occupy the whole house. The Landlord asserts he issued the 1 Month Notices to this Tenant to get her to clean up, and better manage what he referred to as "hoarding", and to protect his new asset, and manage liability. The Landlord asserts this was also done to protect the insurability of his property prior to taking possession, and to protect the other Tenants upstairs, and the building itself. The Tenant acknowledged she has a hoarding issue but feels she has done a lot of work, with her advocates, to take control and clean up.

To support his good faith intentions about moving into the house, the Landlord has explained that he currently lives in Duncan, in a house, and recently, on April 15, 2021, signed a new tenancy agreement with prospective tenants to rent out that house as of May 1, 2021. The Landlord provided a copy of that tenancy agreement, signed by the new Tenants, and the Landlord, and he also provided an accompanying e-transfer receipt showing receipt of first month's rent, and a security deposit. Alongside this, the Landlord provided an employment letter showing he works full time as a heavy equipment operator for a resource company. The Landlord stated this work has been permanent and full time for over 5 years and will continue that way. The Landlord asserts he already has sufficient employment income, and his primacy objective with this house is not business related, but rather for occupancy as his principal residence.

The Landlord also issued a 2 Month Notice to the upper suite, and they have since vacated the property. The Landlord plans to use the entire house, but will be forced to live only in the upper unit until this Tenant moves out. The Landlord asserts he wants to use the suite in the

basement as an extension of his living space, as well as to store many of his furniture, tools, and belongings, as his other storage facilities are not sufficiently secure or safe from the elements.

I have reviewed the relevant parts of the Act, and the policy guidelines, including the excerpts above. I find that part of residing in and occupying a space for a residential purpose is to use the space to store personal belongings and provide an extension of living space, particularly when it abuts or is in close proximity to other living accommodation on the property. I accept that the Landlord wishes to use this space as both storage, and as a general extension of the area he will be living in the upper floor of the house. In this case, the upper and the lower unit do not appear to be accessible by interior stairs. However, I accept that this space abuts and is sufficiently close to the upper unit such that it would be reasonable to utilize it as an extension of that living space. Some examples of this are laid out in the above noted policy guideline, which provides Landlord's the ability to reclaim space in the immediate vicinity of the space they will occupy and use it as an extension of their living space.

I find there is insufficient evidence to show that the primary purpose of the Landlord's occupation of this space is for business purposes, rather than for residential occupation.

I have considered that the Landlord currently has other employment, and has provided evidence to show he will be relocating his residence to this property, which involved renting out his previous residence to new tenants. I find it more likely than not that the Landlord's primary objective is to reside in and occupy the property, both upper and lower units, as he has stated.

I find the Landlord has sufficiently demonstrated his good faith intentions to move into and occupy the rental unit. The Tenant's application to cancel the 2-month Notice is dismissed. The tenancy is ending. Further, the Landlord's application for an order of possession based off the 2 Month Notice is successful.

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

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession. Given the effective date of the 2 Month Notice was listed as April 30, 2021, I find the Landlord is entitled to an order of possession, effective on that date, after the order is served on the Tenant.

The parties are free to discuss whether or not the Tenant will be given additional time to move, on their own and after receiving this decision, should they so choose.

Given my findings on this matter, it is not necessary to consider the merits of either of the 1 Month Notices issued.

I note that under the Act, if the Landlord does not move into the rental unit as set out in the 2-month notice, the Tenant would be entitled to compensation as follows:

***Tenant's compensation: section 49 notice***

***51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if***

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or***
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.***

However, this matter would need to be adjudicated after the Landlord has been given a chance to accomplish the stated purpose.

The Tenant's application was unsuccessful. However, given the Landlord's application for an order of possession was successful I award him the recovery of the filing fee he paid to make his application. I authorize the Landlord to deduct \$100.00 from the security deposit he holds, which leaves \$240.00 as a security deposit.

**Conclusion**

The Tenant's application to cancel the 2 Month Notice to End Tenancy dated February 20, 2021, is dismissed.

The Landlord is granted an order of possession effective April 30, 2021, at 1pm, after service on the Tenant. If the Tenant fails to comply with this order the landlord may file

the order with the Supreme Court of British Columbia and be 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: April 27, 2021

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Residential Tenancy Branch