



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, MNDCT, RR, LRE, OLC, FFT, CNL

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 11, 2021 (the "Application"). The Tenant also made amendments to their Application on February 19, 2021 to include a claim to cancel a Two Month Notice to End Tenancy, and on April 12, 2021 to amend the monetary amount of the Application. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated February 10, 2021;
- an order for regular repairs;
- a monetary order for damage or compensation;
- an order restricting or suspending the Landlord's right to enter;
- an order that the Landlord comply with the *Act*, tenancy agreement or regulation;
- an order granting a rent reduction; and
- an order granting the return of the filing fee.

The Tenant, the Tenant's advocates, K.W., D.D., and the Landlord's Agent B.F. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. 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 is compliant with the *Act*.

### Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the Two Month Notice.

The Tenant's request for an order for regular repairs, a monetary order for damage or compensation, an order restricting or suspending the Landlord's right to enter, an order that the Landlord comply with the *Act*, tenancy agreement or regulation, and an order granting a rent reduction, are dismissed with leave to reapply.

### Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice dated February 10, 2021, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on March 1, 2015. The Tenant pays rent in the amount of \$1,475.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$700.00 which the Landlord continues to hold.

The Landlord's Agent testified that he served the Tenant with the Two Month Notice on February 10, 2021 with an effective vacancy date of April 30, 2021 by posting it to the Tenant's door on February 10, 2021. The Tenant confirmed having received the Two Month Notice on the same day. The Landlord's reason for ending the tenancy on the Two Month Notice is;

*"All of the conditions for 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 Landlord's Agent stated that he served the Tenant with the Two Month Notice as the Landlord sold the rental unit and that the purchaser has asked the Landlord to end the tenancy as the purchaser intends on occupying the rental unit. The Landlord provided a contract of sale dated February 3, 2021 and identifies the Landlord as being the seller of the rental unit, which has a closing date of May 4, 2021. The Landlord's Agent stated that there are no conditions to satisfy and that the sale is now complete. The Landlord provided a written statement from the purchaser which directs the Landlord to serve the Notice to End Tenancy as the purchaser intends to occupy the rental unit.

In response, the Tenant stated that she feels as though the Landlord has served the Two Month Notice in bad faith. The Tenant stated that she has brought forward several concerns to the Landlord and that they have not taken any steps to address them. The Tenant stated that the Landlord sold the rental unit to avoid their obligations under the *Act* and is not acting in good faith. The Tenant stated that the purchaser is a family friend of the Landlord, and is also another occupant in a different unit at the rental property. The Tenant stated that she submitted a higher offer to purchase the rental unit, which was not accepted.

The Tenant provided evidence of her requests for the Landlord to make repairs and to maintain her quiet enjoyment of the rental unit. The Tenant stated that the Landlord has threatened eviction in the past and has encouraged the Tenant to move. As such, the Tenant feels as though the Landlord has only decided to sell the rental unit in order to end her tenancy.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(5) A landlord may end a tenancy in respect of a rental unit if:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) 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;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Landlord served the Tenant with the Two Month Notice on February 10, 2021 with an effective vacancy date of April 30, 2021. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on February 10, 2021 and filed the Amendment to the Application on February 19, 2021. Therefore, the Tenant is within the 15 day time limit under the *Act*.

The Landlord's Agent testified that the Landlord sold the rental unit and that the purchaser has asked the Landlord to serve the Two Month Notice to end the tenancy as the purchaser intends on occupying the rental unit. The Tenant stated that she doesn't feel as though Landlord served the Two Month Notice in good faith, instead, the Tenant expressed her displeasure with the tenancy and stated that her concerns have been dismissed by the Landlord, which has resulted in them wishing to end the tenancy.

Although the Tenant stated that the Landlord has dismissed her concerns regarding issues at the rental unit, I find that this does not restrict or prevent the Landlord from

selling the rental unit. I find that the Landlord provided sufficient evidence with the Contract of Sale to indicate that the rental unit was sold by the Landlord to the purchaser, who is an individual, and that all conditions of the sale have been satisfied.

While the purchaser may be another occupant in the rental property and a friend of the Landlord's family, I find that this is not a contravention of the *Act*, nor does it demonstrate bad faith. I find that the purchaser instructed the Landlord to serve the Two Month Notice to the Tenant as the purchaser intends to occupy the rental unit.

I find that the Landlord has complied with all the requirements of Section 49 of the *Act*. As such, I dismiss the Tenant's Application to cancel the Two Month Notice dated February 10, 2021, without leave to reapply. The purchaser and the Tenant should be aware that if the purchaser fails to use the rental unit as stated above, then pursuant to section 51 of the *Act*, the purchaser may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

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 Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession. As the date of possession has passed, I find that the Landlord is entitled to an Order of Possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

As the Tenant was not successful with their Application, I find that she is not entitled to the return of the filing fee.

### Conclusion

The Tenant's Application to cancel the Two Month Notice is dismissed without leave to reapply. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenants fail to comply with the order of possession it may be filed in 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: May 7, 2021

---

Residential Tenancy Branch