



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Associa British Columbia Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") pursuant to section 49.

The landlord's agents WF and AF attended ("the landlord") and explained they are property managers; the owner of the unit did not attend. The agent WF primarily spoke for the landlord.

The tenant attended with his son and agent AG who primarily spoke for him ("the tenant"). Both parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The arbitrator informed the parties that recording the hearing was prohibited. The parties testified that neither were recording the hearing.

No objections were raised regarding receipt of evidence packages. All parties are found to have been duly served with all documents pursuant to the Act.

The tenant confirmed receipt of the landlord's Two Month Notice ("Notice") on February 27, 2021.

*Preliminary Matter – Burden of Proof*

Section 47 of the *Act* provides that upon receipt of a Notice, the tenant may, within 15 days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

The tenant filed this application to cancel the Notice on March 2, 2021, within the 15-day period.

*Preliminary Matter – Order of Possession*

I informed the parties that I must grant an Order of Possession if the landlord's Notice complies with section 52 as to form and content and I dismiss the tenant's application.

Section 55(1) states as follows:

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Issue(s) to be Decided

Is the tenant entitled to cancel the Two Month Notice? Is the landlord entitled to an Order of Possession?

### Background and Evidence

The tenant explained this long-term monthly tenancy began over 20 years ago on March 1, 2000. Rent is \$1,159.00 per month and a security deposit of \$405.00 was paid at the outset of the tenancy which continues to be held by the landlord. The landlord submitted a copy of the agreement.

The tenant is seeking a cancellation of the Two Month Notice signed February 22, 2021 and served on February 27, 2021 with an effective date of April 30, 2021. The Notice states that the landlord's child (clarified to be her son) intends to occupy the unit. A copy of the Notice was submitted which is in the standard RTB form.

During the 61-minute hearing, the tenant repeatedly asserted that he does not want to move because of the difficulty of finding another place that is affordable.

Also, the tenant testified that the landlord did not have good faith in issuing the Notice. The primary reason is because the landlord previously served a Two Month Notice on November 26, 2020 based on the sale of the unit. The landlord sent a letter to the tenant on December 3, 2021 withdrawing the Notice. In the meantime, the tenant inadvertently learned that the sale had fallen through and believed the landlord's sole purpose in issuing the Notice was to get the tenant to move out.

The tenant also testified that the unit needed repainting which required the unit to be vacant. The tenant believed the landlord intended to paint the unit and this was the primary purpose for the issuance of the Notice.

The landlord's agent at the hearing stated he had been the property manager of the unit for only a few months; he stated that to the best of his limited knowledge, the previous Notice had been issued in good faith as the owner had been trying without success to sell the property for some time. The Notice was issued with respect to a sale that had fallen through. The landlord also stated that to his knowledge, the landlord had no other purpose for the issuance of the Notice except for the occupancy by the landlord's son.

The landlord submitted written instructions from the owner to the agent to seek an Order of Possession as her son now intended to move in. The landlord did not provide other evidence around the circumstances of the intended occupation and the owner did not provide testimony.

The tenant stated he had lived in the unit for more than 20 years and he needed more time to move out. During the hearing, the tenant suggested a move-out date of July 30, 2021 so the tenant could find another place to live.

The landlord's agent attempted to call the owner during a 5-minute break in the hearing to receive instructions to respond to the tenant's suggestion but stated he was unable to reach the owner. In the absence of other instructions, the agent requested a move out date at the end of this month, June 2021.

The landlord acknowledged there were no arrears of rent.

In summary, the landlord requested an Order of Possession effective June 30, 2021. The tenant requested a cancellation of the Notice as it was not issued in good faith. Alternatively, the tenant requested an Order of Possession effective July 31, 2021.

### Analysis

The parties submitted many documents as well as considerable disputed testimony in a 61-minute hearing. 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 claim and my findings around each are set out below.

Section 49 of the Act allows a landlord to end a tenancy on a date that is not earlier than 2 months after the date the tenant receives the notice or if the tenancy is for a fixed term not earlier than the date specified as the end of the tenancy in the agreement, if they, in good faith, plan to move into the rental unit.

The tenant sought a cancellation of the landlord's Two Month Notice.

The tenant questioned the good faith of the Notice. The tenant primarily relied on a previous issued and cancelled Two Month Notice which the tenant believed showed the landlord's primary goal was to get vacancy of the unit and not to have her son move in. Alternatively, the landlord wanted the unit vacant for ease of painting.

*Residential Tenancy Branch Policy Guideline number #2* examines the issue of ending a tenancy for landlord's use of property. It notes that 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 Guideline reads in part as follows:

*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 tenant has disputed the good faith intention of the landlord. In considering the landlord's credibility, I find the landlord's explanation of the background and the issuance of the Notice to be believable and reliable. I find the tenant's assertions that the Notice is not issued in good faith to have no reasonable basis. I find the tenant's primary concern is finding another affordable place to live.

In summary, upon a review of the evidence and testimony, I found no reliable evidence supporting the tenant's claim of bad faith other than the unsupported suspicion that the landlord's request for occupancy is fabricated. I find the landlord's evidence credible when they say they want to have their son live in the unit.

As noted above in *Policy Guideline #2*, "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." I find that the landlord has met the burden of proof on a balance of probabilities that their intention is to live in the unit as stated in the Notice.

Although the Notice has an effective date of April 30, 2021, the landlord agreed that they requested an Order of Possession effective June 30, 2021. This effectively provided four months' notice to the tenant.

I find the landlord has established that the Notice is issued in good faith. I dismiss the tenant's application to cancel the Two Month Notice. Section 55(1) provides that the director must grant the landlord an Order of Possession if the landlord's Notice complies with section 52 (form and content) and the tenant's application is dismissed.

I find the Notice complied with section 52.

Section 55 of the Act states in part as follows:

*(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.*

As I have dismissed the tenant's application, in consideration of section 55(3) and the evidence of the parties, I grant an Order of Possession for the unit effective July 31, 2021 at 1:00 PM at which time the tenant and occupants must provide vacant possession to the landlord. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Court of British Columbia.

### Conclusion

I dismiss the tenant's application without leave to reapply. I grant the landlord an Order of Possession effective July 31, 2021 at 1:00 PM at which time the tenant and occupants must provide vacant possession to the landlord.

Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the 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*.

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Dated: June 09, 2021

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Residential Tenancy Branch