



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, RP, PSF

### Introduction

On March 24, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking a repair Order pursuant to Section 32 of the *Act*, and seeking the provision of services or facilities pursuant to Section 62 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing package by registered mail on or around March 24, 2021 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Notice of Hearing package.

The Tenant also advised that he served the Landlord with his evidence by registered mail on or around June 21, 2021. The Landlord confirmed that he received this evidence, that he had reviewed it, and that he was prepared to respond to it. As such, this evidence was accepted and will be considered when rendering this Decision.

The Landlord advised that he served the Tenant with his evidence by registered mail "a few weeks ago", and the Tenant confirmed receipt of this evidence. Based on this undisputed testimony, I am satisfied that the Landlord's evidence was served in

accordance with Rule 3.15 of the Rules of Procedure. As such, this evidence was accepted and will be considered when rendering this Decision.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, that his other claims would be dismissed, and that he is at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; 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 complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The parties could not agree when the tenancy started, but it was on or around November 2016. There was no written tenancy agreement as required by law, so this was a month-to-month tenancy. They agreed that rent was \$250.00 per month and that it was due at the end of each month. A security deposit was not paid.

The Landlord advised that the Notice was served by process server on or around March 15, 2021. The reason the Landlord served the Notice is because "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)." As well, the Landlord checked off the

box indicating that “The landlord or landlord’s spouse” would be occupying the rental unit. The effective end date of the tenancy was noted as May 31, 2021 on the Notice.

The Landlord submitted that he is currently renting in Victoria, but he wants to move back into the rental unit because of financial reasons. He referenced his documentary evidence to support this position. He testified that he served his notice to end his tenancy with his landlord, that was effective for the same date on the Notice. However, as the Tenant disputed this Notice and was given a hearing date beyond the effective date on the Notice, the Landlord had to coordinate with his landlord to be allowed to stay longer. He stated that his landlord will allow him to vacate his rental once he gets an Order of Possession of the rental unit. He testified that he will move into the rental unit as soon as he can.

The Tenant does not believe that the Landlord will move into the rental unit and he speculates that the Landlord will move to Thailand in the fall. He is suspicious of the legitimacy of the Landlord’s claims to occupy the rental unit; however, he has no proof that the Landlord will not do so. He suggested that the Landlord is conspiring with the neighbours to have him evicted.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord’s right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

When reviewing the totality of the evidence before me, I find it important to note that the Landlord has provided testimony and has submitted documentary evidence corroborating that he will be occupying the rental unit once vacant. While the Tenant has expressed doubt, I do not find that he has provided anything other than speculation. As such, I am not satisfied that there is any evidence to conclude that the Landlord has another purpose or an ulterior motive for ending the tenancy with this Notice. Consequently, I am satisfied that the Landlord has substantiated that he intends to use the rental unit for the stated purpose and as such, there are no grounds to cancel the Notice.

As the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on or around March 15, 2021 complies with the requirements set out in Section 52, I uphold the Notice. In addition, I dismiss the Tenant's Application and I grant the Landlord an Order of Possession that is effective **at 1:00 PM on July 31, 2021 after service of this Order** on the Tenant, pursuant to Sections 52 and 55 of the *Act*.

Both parties are reminded of the one-month compensation requirement that is associated with serving this Notice. As well, both parties were reminded of the 12-month compensation requirement should the Landlord not use the property for the stated purpose.

### Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective **at 1:00 PM on July 31, 2021 after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed 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: July 6, 2021

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Residential Tenancy Branch