



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, OLC

### Introduction

On May 5, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) issued April 30, 2021, and for an order that the Landlord comply with the Act. The matter was set for a conference call.

The Landlord and the Landlord’s Agent (the “Landlord”), as well as one of the Tenant and their Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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.

### Issues to be Decided

- Should the Notice issued April 30, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the Landlord be ordered to comply with the *Act*?

### Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Notice to end tenancy records that the Notice was served on April 30, 2021, by personal service to the Tenant. The Notice indicated that the Tenant was required to vacate the rental unit as of July 1, 2021. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that they have will be moving into this rental unit, as the unit that they currently occupy is unsuitable for them due to their health needs and condition of the unit. The Landlord testified that they will be installing a wheelchair ramp in this rental unit and that this unit is the best unit on the property to suit their current health needs. The Landlord confirmed that they would be personally moving into this rental unit.

The Tenant testified that they believe that the Landlord, the Landlord's staff, and friend are attempting to bully them off the property. The Tenant testified that the Landlord's friend had threatened them with ejection and personal attacks several times and that the Landlord can stay in the unit they are living in right now, as it is also suitable for a wheelchair.

The Landlord testified that the Tenant and one of their friends do not get along and that the will Tenant often picks fights with this friend of the Landlord. The Landlord testified that they do not bully the Landlord but agreed that they have a firm and loud voice, which the Tenant may take the wrong way. The Landlord also testified that the unit they are currently in has rotted, causing their bed to fall through parts of the floor and that the

unit is too old and not worth fixing up, so they will be moving it to this other unit that they own.

The Tenant testified the Landlord has a pattern of issuing notices to end tenancy for their own use but then never moving in. The Tenant presented a witness, The witness testified that the Landlord ended their tenancy for the Landlord's use of the property in June 2019 but that the Landlord never moved into the rental unit, stating that instead, the Landlord rented out the unit to someone else.

The Landlord testified that they did move into the rental unit after some repairs were made to the property but that they did have a roommate, living with them, in the second bedroom.

The Tenant testified that they do not believe that thier rental unit is suitable for a wheelchair ramp.

The Landlord testified that they are able to install a wheelchair ramp in this unit.

The Tenant testified that they would like to offer the Landlord a settlement offers to end the tenancy. The Tenant offered to move out of the rental unit if the Landlord would pay them \$7,000.00.

The Landlord refused this offer and did not make a counteroffer during these proceedings.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the documentary evidence provided by the Tenant that the Landlord personally served the Notice to the Tenant on April 30, 2021. Section 49 of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until May 15, 2021, to dispute the Notice. In this case, the Tenant filed to dispute the Notice on May 5, 2021, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address 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.*

*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.*

I have reviewed all of the testimony and documentary evidence before me, and I accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. I acknowledge the Tenant's witness testimony that the Landlord had ended their tenancy for their own use in 2019. However, this was over two years ago and I am satisfied with the explanation offered by the Landlord that this unit has fallen into disrepair and is too old to renovate. Consequently, I dismissed the Tenant's application to cancel the Notice issued on April 30, 2021.

Pursuant to section 55 of the *Act*, if a Tenant's application is dismissed and the Notice complies with section 52, I am required to grant the Landlord an order of possession to the rental unit.

I have reviewed the Notice, and I find the Notice issued April 30, 2021, is valid and enforceable. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than two days after service on the Tenant.

Both the parties are informed of their rights and responsibilities pursuant to section 51 of the Act regarding the compensation due as set out in section 51(1) and the possible compensation pursuant to 51 (2) of the Act, which states the following:

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

***51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.***

*(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

*(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.*

***(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.*

Additionally, as this tenancy is ending, I find that there is no need to issue an order for the Landlord to comply with the Act, and I dismiss this portion of the Tenant's application.

Conclusion

The Tenant's application to cancel the Notice, issued April 30, 2021, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenant. The Tenant must be served with this Order. 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.

The Tenant's application for an order to comply is dismissed.

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: September 13, 2021

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Residential Tenancy Branch