



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNL, OLC, FFT**

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Tenant applied for:

- an order to cancel a Two Month Notice to End Tenancy For Landlord's Use of Property, dated October 3, 2021 (the Two Month Notice);
- an order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they served their Notice of Dispute Resolution Proceeding and evidence on the Landlord by email on October 24, 2021. The Landlord confirmed they received it on October 25, 2021, noting that they had not consented to service by email. However, the Landlord confirmed they were prepared to proceed. I find the Landlord sufficiently served on October 27, 2021 in accordance with section 71 of the Act.

The Landlord testified they served their responsive evidence on the Tenant by registered mail on November 9, 2021, and provided a Canada Post receipt and tracking number. The Landlord testified they also put their responsive evidence in the Tenant's mailbox on November 10, 2021. I find the Landlord's evidence deemed received by the Tenant on November 13, 2021, in accordance with section 90 of the Act. I find the Landlord served the Tenant in accordance with section 89 of the Act.

### Preliminary Matter

The Tenant applied for an order for the Landlord to comply with the Act, regulation, or tenancy agreement. However, as the Applicant's dispute description spoke only of disputing the Two Month Notice, which the Tenant had also applied for, I dismiss this portion of the Tenant's application. The remainder of this decision will address the Tenant's application for an order to cancel the Two Month Notice, and for the filing fee.

### Issues to be Decided

- 1) Is the Tenant entitled to an order to cancel the Two Month Notice? If not, is the Landlord entitled to an order of possession?
- 2) Is the Tenant entitled to the filing fee?

### Background and Evidence

The parties agreed on the following particulars of the tenancy. It began seven or eight years ago; rent is \$1250.00, due on the first of the month; and the Tenant paid a security deposit of \$625.00, which the Landlord still holds.

The Landlord submitted as evidence a copy of the Two Month Notice. The Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The Two Month Notice indicates the tenancy is ending because the Landlord or the Landlord's spouse will occupy the unit.

The Landlord testified they served the Two Month Notice on the Tenant in person on October 3, 2021, but that the Tenant would not accept the Notice. The Landlord testified they then put the Two Month Notice in the Tenant's mailbox. The Tenant testified they retrieved the Notice from the mailbox on October 6, 2021.

In written and verbal testimony, the Tenant stated that they do not believe the Landlord served the Two Month Notice in good faith, because the Landlord's spouse had previously let it be known they wanted the Tenant out of the unit; because the Landlord stated they would be a bad spouse if they did not do what their spouse wanted; and because the Landlord apologized about serving the notice, and said they would try to talk to their spouse again.

One of the Tenant's written submissions describes the Landlord serving them the Two Month Notice:

I was sitting on the stairs talking a bit when he attempted to tell me he had some documents he needed me to see. He started to tell me that he had lots of problems and he didn't want to discuss the details of those problems. He seemed rather uncomfortable and his body language reflected that. I agreed and said yes it's been difficult with Covid [sic]. At that time he removed his hands from his head and stated he needed to move back into apt [sic] I was renting. I didn't expect that news but was very empathetic. He apologized several times and said he had no choice. He had no place to sleep.

The Tenant also testified to challenges with their mobility, their child's mental health, and conflicts with neighbours. The Tenant stated that in response to the Tenant's conflict with neighbours, the Landlord said, several times, they would evict everyone if the Tenant and their neighbours could not resolve their differences.

The Landlord provided verbal and written testimony that they will be moving into the unit as they had separated from their spouse in September 2021, and needed a place to live. The Landlord testified they had moved into a temporary unit for November and December, 2021, to house themselves until they could move into the Tenant's unit. I found the Landlord's testimony convincing.

The Landlord submitted as evidence a copy of their tenancy agreement for November 1 to December 31 2021, as well as chequing account images showing payment of a security deposit and November rent to the landlord of the temporary unit.

### Analysis

I find the Landlord served the Two Month Notice on the Tenant in person on October 3, 2021, and in accordance with section 88 of the Act. I find the Two Month Notice meets the form and content requirements of section 52 of the Act.

As described in Residential Tenancy Branch Rule of Procedure 6.6, where a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the notice is based.

I accept the Landlord's affirmed testimony and supporting documentary evidence that they have separated from their spouse and will be moving into the rental unit. I also

accept the Tenant's written submission stating that when serving the Two Month Notice, the Landlord stated they had problems and that they had to move into the rental unit because they had no place to stay.

Taking into careful consideration all the oral and documentary evidence presented, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving the reason for the Two Month Notice, that being that they will be moving into the rental unit, as allowed by section 49 of the Act.

The Two Month Notice is upheld. The current tenancy will end at 1:00 p.m. on December 31, 2021, the effective date of the Two Month Notice. The Landlord is entitled to an order of possession, in accordance with section 55 of the Act.

As the Tenant has been unsuccessful in their application, I decline to award them the filing fee.

### Conclusion

The Tenant's application is dismissed.

The Landlord is granted an order of possession which will be effective at 1:00 p.m. on December 31, 2021. The order of possession must be served on the Tenant. The order of possession 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: November 29, 2021

---

Residential Tenancy Branch