



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL, FFT**

### Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- cancellation of the Landlord's Two Month Notice for Landlord's Use of Property dated September 13, 2021 ("2 Month Notice") pursuant to section 49; and
- authorization to recover the filing fee pursuant to section 72.

The Tenant did not attend this hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 11:54 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Tenant was not present to testify as to when and how she served the NDRP on the Landlord. The Landlord acknowledged receipt of the NDRP by registered mail sometime in November 2021. I find the NDRP was served on the Landlord in accordance with section 89 of the Act.

The Landlord testified the Tenant did not serve any evidence on him.

Preliminary Matter – Effect of Non-Attendance by Tenant

Rules 7.1, 7.3 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* state:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not attend the hearing within 10 minutes of its commencement, the Tenant's application is dismissed without leave to reapply. As the Tenant was not present at the hearing, the Tenant's written submissions were not considered.

Issues to be Decided

As the Tenant's application has been dismissed, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Background and Evidence

While I have turned my mind to all 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 principal aspects of the Tenant's application and my findings are set out below.

The Landlord testified the tenancy commenced on November 1, 2020, for a fixed term until October 31, 2021 and then continued on a month-to-month basis. The Landlord

stated the rent was \$2,450.00 payable on the 1<sup>st</sup> day of each month. The Landlord stated the Tenant paid a security deposit of \$1,250.00 which he is holding in trust for the Tenant. The Landlord stated the Tenant has not paid the rent for the last three months and she has rental arrears of \$,7,350.00.

The Landlord stated he served the 2 Month Notice on the Tenant by registered mail on September 14, 2021. The Landlord provided the registered mail tracking number to corroborate his evidence of service of the 2 Month Notice on the Tenant. I find the 2 Month Notice was served on the Tenant pursuant to section 88 of the Act.

The Landlord testified he was currently living with his mother in her apartment. The Landlord stated that he intends in good faith to move into the rental unit for his own use.

### Analysis

Sections 49(1), 49(2), 49(3), 49(7) and 49(8) of the Act state in part:

49(1) In this section:

[...]

"landlord" means

(a) for the purposes of subsection (3), an individual who

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest;

[...]

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- (i) not earlier than 2 months after the date the tenant receives the notice,
- (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

[...]

- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.
- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.
- (8) A tenant may dispute
  - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
  - (b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

The Landlord stated he served the 2 Month Notice on the Tenant by registered mail on September 14, 2021. Pursuant to section 90, the Tenant was deemed to have received the 2 Month Notice on September 19, 2021. Pursuant to section 49(8)(a) of the Act, the Tenant had 15 days to dispute the 2 Month Notice, or September 29, 2021. The records of the Residential Tenancy Branch disclose FM filed his application for dispute resolution to dispute the 2 Month Notice on September 28, 2021. I find the Tenant made her application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

*Residential Tenancy Policy Guideline# 2A* ("PG 2A") addresses the requirements

for ending a tenancy for Landlord's use of property and the good faith requirement. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

*"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement."*

The undisputed Landlord's testimony was credible and compelling. I find the Landlord was acting in good faith when he served the 2 Month Notice on the Tenant.

Section 52 of the Act states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

I find the Landlord has established grounds to end the tenancy pursuant to section 49(3) of the Act on the basis that he intends in good faith to occupy the rental unit.

I must now consider whether the Landlord is entitled to an Order of Possession. Section 55 of the Act states:

- 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.

I have reviewed the 2 Month Notice and finds it complies with the form and content requirements of section 52 of the Act. 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.

Section 53 of the Act states:

- 53 (1)** If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement
- (a) that complies with the required notice period, or

- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

The effective date of the 2 Month Notice was November 30, 2021. The Landlord's undisputed testimony is the Tenant is still in possession of the rental unit. Pursuant to section 68(2)(a), I order the tenancy ended on February 8, 2022.

Based on the above, I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached order on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

As the Tenant was not successful in her application, I dismiss her claim for reimbursement of the \$100.00 filing fee she paid for her application.

### Conclusion

The Tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenant. This Order must be served by the Landlord on the Tenant as soon as possible upon receipt from the Residential Tenancy Branch. Should the Tenant or anyone on the premises 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: February 11, 2022

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Residential Tenancy Branch