



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The tenant, the landlord, and the landlord's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

The parties confirmed receiving the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

1. Should the Two Month Notice to end tenancy issued by the landlord be upheld or cancelled?
2. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

The tenant submitted that this tenancy began on November 1, 2011. The tenant submitted that he was living in another rental unit in the residential property, which ended when his previous landlord ended that tenancy. The tenant submitted that he met the landlord and her husband (KB) in the lobby of the building, they arranged for the tenant to move into the rental unit they owned in the building as their previous tenant had just vacated the unit without notice. The tenant submitted that he arranged with KB that this tenancy would be on a “yearly renewable fixed-term tenancy” and it has been this type of tenancy since 2011. The tenant submitted that KB “wanted 12 cheques in advance each year, for each yearly renewable tenancy”. The tenant submitted that he and KB shook hands and for 11 years, the tenancy has been an oral, renewable tenancy.

The tenant said that counsel is now arguing that the tenancy is a month-to-month, not a fixed-term tenancy. The tenant submitted that this was not the case, referring to Tenancy Policy Guideline, as the tenant argued that the fact he gave the landlord 12 cheques each year proved that the tenancy renewed each year for another year, by way of the verbal agreement. Following up on that argument, the tenant submitted that verbal agreements are as enforceable as written tenancy agreements.

Filed in evidence was the tenant’s written submissions, with arguments supporting his position in this matter, copies of the rent cheques, text messages and email communication between the parties, and the Notice.

In response to the tenant’s position that the tenancy was a yearly, renewable fixed-term tenancy, counsel argued that the tenant and KB arranged to take over the tenancy of the former tenant who vacated. That tenancy, which began on July 1, 2005, was on a

month-to-month basis. A copy of the former tenant's tenancy agreement was filed in evidence. Counsel submitted that the issuance of 12, post-dated monthly cheques was simply for convenience, but did not establish a renewal, yearly fixed-term.

Counsel submitted that at no time did they ever discuss a fixed-term with the tenant.

Filed in evidence by the landlord was an affidavit signed by the landlord, the Notice, land title records, and email communication between the parties.

As to the Notice, the landlord's evidence shows that the landlord served the Notice to the tenant by email on November 29, 2021, by registered mail on December 13, 2021, and by attaching it to the tenant's door on January 20, 2022. The evidence shows the Notice was ultimately served to the tenant by attaching it to the tenant's door as the tenant did not respond to the first two services.

In his application, the tenant confirmed receiving the Notice on January 20, 2022. The Notice was dated November 28, 2021, and listed an effective move-out date of June 30, 2022. Filed in evidence was a copy of the Notice.

Counsel submitted he took no issue with the timing of the tenant's application made on February 7, 2022.

The Notice listed as reason for ending the tenancy that the rental unit will be occupied by the landlord or landlord's spouse.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

Counsel submitted that the landlord issued the tenant the Notice because she intends on moving into the rental unit, due to KB now living in a care home and their current home was no longer suitable to the landlord's needs.

#### Tenant's response –

The tenant submitted that he is not disputing the fact the landlord will move into the rental unit. The tenant took exception with the effective move-out date of June 30, 2022. The tenant argued that the fixed-term ended on October 31, 2022, and that he should be allowed to stay until that date.

When asked if the tenant had anything further to say in support of his application to dispute the Notice, the tenant submitted there was no need as I made my decision at 11:21. I note the hearing began at 11:00 a.m.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) of the Act states that 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.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Residential Tenancy Policy Guideline 2 provides 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 their obligations under the Act.

Upon review of the Two Month Notice to End Tenancy dated November 28, 2021, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 89(1) of the Act.

After reviewing the landlord's evidence and hearing from counsel, I find that the landlord genuinely intends to move into the rental unit, as her current home no longer meets her needs.

I therefore find that the landlord did not act dishonestly or had an ulterior motive in issuing the Notice seeking the end of the tenancy. The tenant said he did not doubt that the landlord intended to move into the rental unit.

The tenant's main assertion in contesting the Notice was that the effective move-out date of June 30, 2022, should have been October 31, 2022, or the date that the claimed renewal, yearly fixed-term expired.

The tenant asserted that the tenancy was on a renewal, yearly fixed-term. I disagree.

The Act defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

I agree with the tenant that oral tenancy agreements are enforceable. However, Section 13 of the Act provides requirements for tenancy agreements. In the case of a fixed-term tenancy, a tenancy agreement **must** set out the date on which the term ends.

In the absence of a clear, end date of the fixed-term, I find this tenancy is a month-to-month tenancy. I find nothing in the Act or Regulation which allows a renewable, yearly fixed-term which automatically renews each year when a tenant pays 12, posted cheques, that does not list the date the term ends.

If that were the case, the tenancy could continue in-perpetuity without the landlord ever having the ability to take back the rental unit for their own use or to sell the property, or for any other landlord’s use.

I therefore find that, upon a balance of probabilities, the landlord has met their burden of proving that she honestly intends to move into the rental unit and that the Notice was issued in good faith.

I therefore find the Notice is valid and enforceable.

As a result, I **dismiss** the tenant’s application seeking cancellation of the Notice and recovery of the filing fee, **without leave to reapply**.

Under Section 55(1)(b) of the Act, I grant the landlord an order of possession of the rental unit, effective **June 30, 2022, at 1:00 p.m.**

The order of possession of the rental unit is included with the landlord's Decision and must be served on the tenant to be enforceable. Should the tenant fail to vacate the rental unit within two (2) days after service, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenant.

As I have dismissed the tenant's application, I also dismiss the tenant's request to recover the filing fee, without leave to reapply.

I also address the tenant's assertion that I made my decision on his application at 11:21, 21 minutes into the hearing, which lasted 42 minutes. It was not clear why the tenant made this statement, but I presumed he meant that I made my decision after I informed the parties that I could not find the tenancy was a fixed-term tenancy.

I inform the tenant this is incorrect. I made my Decision after the tenant said he did not dispute that the landlord intended on moving into the rental unit, which should have been the point of the tenant's application.

### Conclusion

The tenant's application seeking cancellation of the Notice and to recover the cost of the filing fee is dismissed without leave to reapply as I have found the Notice to be valid and enforceable.

The landlord has been issued an order of possession for the rental unit, effective June 30, 2022, at 1:00 p.m.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 12, 2022

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Residential Tenancy Branch