



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;

The tenant L.R.-T. attended for both tenants ("the tenant"). The landlord attended.

Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing.

The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. The landlord raised no issues of service.

The tenant acknowledged receipt of the landlord's Two Month Notice on January 30, 2022 sent by registered mail. The tenant raised no issues of service.

### Settlement

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

During this hearing, the parties discussed the issues between them. They attempted to find a compromise to the issue. They were unable to achieve a resolution of their dispute.

Accordingly, the hearing continued.

#### Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Two Month Notice?

Is the landlord entitled to an Order of Possession?

#### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

A copy of the tenancy agreement was submitted. The parties agreed on the background of the tenancy as follows. The monthly tenancy began on July 1, 2018. Rental is \$1,100.00 monthly payable on the first. A security deposit of \$550.00 and a pet deposit in the same amount were paid by the tenant at the start of the tenancy. The landlord holds the deposits of \$1,100.00 in trust.

The unit is a lower suite in a residential home. The landlord occupies the upper portion of the house.

The tenant is seeking a cancellation of the Two Month Notice issued on January 17, 202 with an effective date amended to March 31, 2022.

The Notice states that the landlord intends to occupy the unit. A copy of the Notice was submitted which is in the standard RTB form

During the 45-minute hearing, the tenant repeatedly asserted they do not want to move because of the difficulty of finding another place. The tenant outlined multiple unsuccessful efforts to find replacement housing.

The tenant also denied that the landlord intended to move into the lower suite and use it

as an extension of her living area. The tenant stated that the landlord has a “cabin” on the property which is used as a studio.

The landlord acknowledged she has lost “confidence” in the tenant. She spoke to events between the parties which created personal difficulties. Nevertheless, the landlord asserted those explanations are not the reason she issued the Notice. She said she is 80 years old and wants to live alone. Her intentions are to use the unit as an extension of her unit.

### Analysis

Section 49 of the Act allows a landlord to end a tenancy on a date that is not earlier than 2 months after the date the tenant receives the notice or if the tenancy is for a fixed term not earlier than the date specified as the end of the tenancy in the agreement, if they, in good faith, plan to move into the rental unit.

The tenant questioned the good faith of the Notice saying that she had seen the landlord using the studio cabin for sleeping. She objected to moving because she doubted the landlord intended to use the unit and believed the landlord was acting in retaliation for personal reasons.

*Residential Tenancy Branch Policy Guideline number #2* examines the issue of ending a tenancy for landlord’s use of property.

The Guideline notes that *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.

This Guideline reads in part as follows:

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.

The tenant has disputed the good faith intention of the landlord, which I find has no basis given the testimony and evidence of the landlord which I find credible and reliable. I found no evidence supporting the tenant's claim of bad faith other than the unsupported observation that the landlord does not need to live in the unit. I find the landlord's evidence shows honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. I accept that the landlord wants to incorporate the unit into their living area.

As noted above in Policy Guideline #2, "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." I find that the landlord has met the burden of proof on a balance of probabilities that their intention is to live in the unit and incorporate the unit into their living area.

Although the Notice has an effective date of March 31, 2021 (corrected), the landlord agreed that they requested an Order of Possession effective May 31, 2022. This effectively provided four months' notice to the tenant.

I find the landlord has established that the Notice is issued in good faith. I dismiss the tenant's application to cancel the Two Month Notice.

Section 55(1) provides that the director must grant the landlord an Order of Possession if the landlord's Notice complies with section 52 (form and content) and the tenant's application is dismissed.

I find the Notice complied with section 52.

As I have dismissed the tenant's application, I grant the landlord an Order of Possession effective May 31, 2022, at which time the tenant and occupants must provide vacant possession to the landlord. Should the tenant fail to comply with this

Order, this Order may be filed and enforced as an Order of the Court of British Columbia.

The tenant's application for reimbursement of the filing fee is not allowed as the tenant was not successful in the application.

Conclusion

I dismiss the tenant's application without leave to reapply. I grant the landlord an Order of Possession effective May 31, 2022 at which time the tenant and occupants must provide vacant possession to the landlord.

Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the 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: April 12, 2022

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Residential Tenancy Branch