



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** LL: MNDCL-S, OPL, FFL  
TN: CNL FFT

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for landlord’s own use pursuant to section 55;
- a monetary order for compensation for money owed or monetary loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for landlord’s own use (the 2 Month Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord was represented by their legal counsel MC. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence, and that they were ready to proceed with the scheduled hearing. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant duly served with the Applications and evidence.

As the tenant confirmed receipt of the 2 Month Notice on January 12, 2022, I find that this document was duly served on the tenant in accordance with section 88 of the *Act*.

**Issues(s) to be Decided**

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary orders requested?

Are the parties entitled to recover the filing fee for their applications?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began over nine years ago. Monthly rent is currently set at \$883.00, payable on the fifteenth day of the month. The landlord still holds a security and pet damage deposit of \$375.00 each deposit.

The landlord served the tenant with a 2 Month Notice on January 12, 2022 with an effective move-out date of March 15, 2022 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord is the current owner of the home, which contains two rental suites. The tenant resides in the two bedroom suite, while the other one bedroom suite is occupied by another tenant.

The landlord testified that they had served the tenant with the 2 Month Notice in order for their parents to move in. The landlord testified that their father was gravely ill, and had recently sold their blueberry farm.

The tenant is disputing the 2 Month Notice as they do not believe that the landlord had issued the 2 Month Notice in good faith. The tenant notes that there is another suite in the home which was available, and discovered a social media advertisement for a 1 bedroom unit for \$950.00 per month, which the tenant believes was posted by the

landlord. The tenant also notes that they have been a model tenant in this long-term tenancy, while the other tenant has not. The tenant also notes that their monthly rent is below the average market rent.

The landlord disputes that the advertisement was posted by them as they do not use social media for privacy reasons related to their employment. The landlord also notes that the name of the account is different from their name, or any aliases that they may use. The landlord also submitted a statement in evidence from the other tenant that they have no plans to move out.

The landlord requests an order of possession in order for their parents to move in. Additionally, the landlord is seeking the following monetary orders. The landlord is seeking reimbursement of the losses associated with the tenant's failure to move out in accordance with the 2 Month Notice, as well a recovery of unpaid utilities for this tenancy. The landlord testified that the utilities have not been paid for this entire tenancy despite the fact that utilities are not included in the monthly rent. The landlord is seeking recovery of the utilities for the past two years.

<b>Item</b>	<b>Amount</b>
Storage Unit (2 months-\$550.00x2)	\$1,100.00
Hotel Accommodation	1,686.50
Utilities – hydro	2,148.17
Utilities – gas	1,534.93
Municipality-garbage/recycling	4,107.92
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$10,677.52</b>

The tenant disputes the monetary claims made by the landlord. The tenant testified that the landlord has never requested payment of utilities, which is in accordance with the verbal agreement made at the beginning of the tenancy. The tenant argued that the monthly rent is inclusive of utilities.

### **Analysis**

Subsection 49(3) of the *Act* sets out that a landlord 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.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*“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 that they do not have an ulterior motive for ending the tenancy.”*

As the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

Although the tenant raised concerns about the landlord's true motive in ending this tenancy, I find the landlord had provided detailed evidence to support that they had issued the 2 Month Notice in good faith, including statements and receipts to support that they required this specific suite for their own use.

I find the landlord's testimony to be credible and supported in evidence. Although the tenant provided evidence of a social media post for a 1 bedroom unit for rent, the landlord disputes that they even have a social media account. As noted by the landlord, the name referenced on the post is not the landlord's. Furthermore, the landlord provided a statement from the other tenant confirming that they have no plans to vacate their suite.

I find the landlord provided a valid explanation for why they had served the tenant with a 2 Month Notice. Although the tenant raised concerns about why the other suite was not selected instead, I find the landlord demonstrated that not only was the other unit occupied, but the two units were not identical in size. Furthermore the landlord provided detailed evidence of hotel and storage costs the family has incurred while awaiting vacant possession of the tenant's rental unit.

I note that despite the fact that the tenant has been a long-term, model tenant, the landlord has provided sufficient evidence to support that they had issued the 2 Month Notice in good faith. Although the tenant raised concerns about why the landlord had selected their unit instead of the other one, I do not find the tenant's beliefs to be supported in evidence.

I find that the landlord has met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has met their onus of proof to show that the landlord, in good faith, requires the tenant to permanently vacate the rental unit in order for their parents to move in. Accordingly, I dismiss the tenant's application to cancel the 2 Month Notice dated January 12, 2022. I find that the 2 Month Notice complies with section 52 of the *Act*, which requires that the Notice 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, and (e) when given by a landlord, be in the approved form.

Section 55(1) of the *Act* reads as follows:

- 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.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that the landlord is entitled to an Order of Possession effective April 30, 2022.

As the tenant was not successful with her application, the tenant's application to recover the filing fee is dismissed without leave to reapply.

The landlord requested recovery of the losses associated with the tenant's failure to vacate the rental unit by the effective date of the 2 Month Notice. I note that the tenant is entitled to dispute a 2 Month Notice under the *Act* if they believed that the 2 Month

Notice was not issued in good faith. Although the tenant was not successful in their application to dispute the 2 Month Notice, I note that the tenant is within their right to dispute the 2 Month Notice within the required time period, which they did. I find that the tenant provided valid explanations for why they had disputed the 2 Month Notice. Furthermore, I note that although the effective date of the 2 Month Notice had passed, the tenant is entitled to remain in the rental unit for use and occupancy purposes while awaiting a decision of an Arbitrator. I am not satisfied that the losses claimed for storage and hotel costs are justified as they are not losses incurred due to the tenant's failure to comply with the Act or tenancy agreement. Accordingly, these claims are dismissed without leave to reapply.

The landlord also sought recovery of the unpaid utilities for the past two years. The landlord argued that the utilities were never included as part of the monthly rent. The tenant argued that there was an agreement that the rent included all utilities, and the landlord had never required that the tenant pay anything towards this amount during this tenancy.

I have reviewed the evidence and testimony before me, and I find that despite the fact that utilities is not noted as included on the tenancy agreement, the tenant has never paid anything to the landlord other than the monthly rent. Furthermore, despite the long history of nonpayment of utilities, the landlord has not served the tenant with any written warnings or notices for unpaid utilities during this tenancy.

I find that the legal principle of estoppel applies in this case. Estoppel is a legal doctrine that holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct, and are now going to strictly enforce the right previously waived or not enforced.

As shown by the evidence and testimony before me, the landlord has only collected the monthly rent during this entire tenancy. I find that no prior warning letters or Notices to End Tenancy had been served to the tenant for failing to pay utilities, nor has the tenant been served with a notice that the landlord was changing their conduct and was now going to strictly enforce the requirement that the tenant pay utilities as required by the *Act* and tenancy agreement. In the absence of written notice to the tenant informing them that utilities were in fact not included, and based on the legal doctrine of estoppel, I find that the landlord has established over time that monthly rent was inclusive of the requested utilities despite the fact that the tenancy agreement does not indicate this.

Accordingly, I dismiss the landlord's claims for recovery of the utilities without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was unsuccessful with the majority of their claims, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### **Conclusion**

I dismiss the tenant's entire application without leave to reapply. I find that the landlord's 2 Month Notice to be valid and effective. I issue an Order of Possession to the landlord effective April 30, 2022. The landlord is provided with this Order, and the tenant must be served with this Order. Should the tenant fail to comply with this Order by moving out by April 30, 2022 or within 2 days of being served with the Order of Possession, whichever is later, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's monetary claims without leave to reapply.

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 26, 2022

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Residential Tenancy Branch