



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: OPL, FFL  
Tenant: CNL, OLC, MNDCT, RR, FFT

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlord's Application for Dispute Resolution was made on April 28, 2022. The Landlord applied for the following relief, pursuant to the Act:

- an order of possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property dated May 20, 2022 (the Two Month Notice);
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was made on June 6, 2022. The Tenant applied for the following relief pursuant to the Act:

- an order cancelling the Two Month Notice;
- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement;
- an order for compensation for monetary loss or other money owed;
- an order reducing rent for repairs, services, or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

Both parties confirmed receipt of their respective Notices of Dispute Resolution Proceeding packages. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever all but the Landlord's Application to end the tenancy based on the Two Month Notice, and for recovery of the filing fee. In addition, I find it appropriate to exercise my discretion to sever all but the Tenants' Application to cancel the Two Month Notice and to recover the filing fee. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession based on the Two Month Notice?
2. Is the Landlord entitled to recover the filing fee?
3. Is the Tenant entitled to an order cancelling the Two Month Notice?
4. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The parties testified that the tenancy began no less than 18 years ago. Currently, rent of \$900.00 per month is due on the first day of each month. The parties agreed the Tenant did not pay a security deposit.

The Landlord testified that he served the Two Month Notice on the Tenant by registered mail on May 20, 2022. The Tenant acknowledged receipt on May 26, 2022. A copy of the Two Month Notice and a Proof of Service document were submitted in support.

The Two Month Notice was issued on the basis that the rental unit would be occupied by the Landlord. The Landlord testified that he is currently working in another community and needs to move into the rental unit on November 15, 2022. He testified that he works in the other community for about four months per year. The Landlord testified he is having relationship issues with his spouse and cannot return to his home.

In reply, the Tenant testified the Landlord has been trying to kick Tenant out of the rental unit and believes it is about money. The Tenant suggested the Landlord could leave the rental unit vacant for six months, renovate it, then rent it out at a higher rate. The Tenant testified that she has experienced personal issues but finally has a job where she can walk to work and is otherwise getting her life on track. The Tenant also suggested the Landlord is targeting her. The Tenant also suggested that the financial positions of other tenants and the Landlord should be a factor in determining whether or not the Landlord should be permitted to end the tenancy and move into the rental unit.

At the end of the hearing the parties were given an opportunity to make final submissions or refer me to evidence. The Landlord testified again that he intends to occupy the rental unit and submitted that although not required to justify why he selected the Tenant's rental unit, size was a factor. The Landlord also stated that he would be willing to submit to a "spot check" to confirm he is occupying the rental unit.

The Tenant again stated her belief that the Landlord's decision to evict her is about money. She stated she knows the Landlord will not occupy the rental unit.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 49 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy if the landlord or a close family member intends in good faith to occupy the rental unit.

In this case, I find the Two Month Notice was served on the Tenant by registered mail and was received on May 26, 2022. I also find the Two Month Notice was disputed on time in accordance with section 47(8) of the Act.

After considering the evidence and submissions of the parties, I find it is more likely than not that the Landlord intends to occupy the rental unit. I accept the Landlord's evidence regarding relationship issues with his spouse and that he cannot return home. However, I find the Tenant merely made allegations relating to her belief that the Landlord will not occupy the rental unit but referred me to no documentary evidence in support.

As the Landlord testified the rental unit is not needed until November 15, 2022, I decline to grant an order of possession effective on two days' notice. Instead, I find the Landlord is entitled to an order of possession which will be effective on October 31, 2022, at 1:00 p.m. The rights and obligations of the parties will continue until the tenancy ends in accordance with this order.

Having been successful, I also grant the Landlord a monetary order for \$100.00 in recovery of the filing fee paid to make the Landlord's application.

The Tenant's requests for an order cancelling the Two Month Notice and to recover the filing fee are dismissed without leave to reapply.

### Conclusion

The Landlord is granted an order of possession, which will be effective on October 31, 2022, at 1:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order of \$100.00 in recovery of the filing fee. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenant's requests for an order cancelling the Two Month Notice and to recover the filing fee are dismissed without leave to reapply. The remainder of the relief sought by the Tenant is dismissed with 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: September 20, 2022

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Residential Tenancy Branch