



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1250231 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      FFT, OLC, CNL (Tenant)  
                                 OPL, FFL (Landlord)

### **Introduction**

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Tenant filed their application May 13, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 28, 2022 (the “Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Landlord filed their application May 18, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the Notice
- To recover the filing fee

J.W. and L.B. appeared at the hearing for the Tenant. D.W. appeared at the hearing for the Landlord and called C.W. as a witness at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and C.W. provided affirmed testimony.

J.W. confirmed that the Tenant's request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is the same as the dispute of the Notice and therefore this request is dismissed without leave to re-apply.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. In this decision, I will only refer to the evidence I find relevant.

### **Issues to be Decided**

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?
4. Is the Landlord entitled to recover the filing fee?

### **Background and Evidence**

J.W. testified as follows. The tenancy started 20 years ago and is a month-to-month tenancy. Rent is \$325.00 per month due on the first day of each month. The Tenant did not pay a security or pet damage deposit.

D.W. testified that they purchased the rental unit building two years ago. D.W. did not dispute the above points.

The Notice was submitted. The Notice has an effective date of June 28, 2022. J.W. did not raise an issue with the form or content of the Notice when asked. The grounds for the Notice are that the Landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

There is no issue that the Notice was served, and received by the Tenant, on April 28, 2022.

D.W. provided the following testimony and submissions. The Landlord is a family corporation as that term is defined in the *Residential Tenancy Act* (the "Act"). D.W. owns 50% of the corporation and D.W.'s wife owns 50% as shown in the documentary evidence submitted. D.W. wants his son, C.W., to move into the rental unit for his son's use. D.W. has provided evidence to support that their son intends to move into the rental unit. D.W.'s son moved from another country to the city of the rental unit building, as shown in the documents submitted. D.W.'s son is currently living with D.W. and is looking for their own residence.

C.W. testified as follows. C.W. is D.W.'s son. C.W. was living in another country but is now living in the city of the rental unit building with their parents. C.W. has been living with their parents for two to three months and would like to find their own space and not live with their parents. C.W. would like to have more independence. C.W. plans to move into the rental unit. C.W. has not seen the rental unit because the Tenant lives in it. C.W. plans to live in the rental unit, without having seen it, because it is in the location C.W. wants to be. C.W. also wants to live in the rental unit because it is a bachelor suite which is the right size for C.W. As well, the rental unit is in a central location and C.W. is familiar with the building. C.W. currently works in the city of the rental unit building.

J.W. provided the following testimony and submissions. The Tenant is 60 years old and has lived in the rental unit building for almost 20 years. The Tenant has mental health challenges. The Tenant gets along well with the other residents of the building. The Tenant wants to remain in the rental unit. Other units in the building have rents that are \$1,000.00 or \$1,100.00 per month. J.W. is surprised that C.W. wants to move into a bachelor suite on the ground floor of the building given C.W.'s schooling and where C.W. has been living. There are eleven units in the building, three of which are the same size as the rental unit or smaller which causes J.W. to wonder why D.W. and C.W. are so intent on using the rental unit. As soon as L.B. sold the rental unit building to D.W., D.W. wanted to evict the Tenant.

In reply, D.W. testified as follows. C.W. is a bachelor and only needs a bachelor suite. All other units in the building are either one or two bedroom units. Due to C.W.'s lifestyle, a bachelor suite is best for C.W. C.W. is used to living in small spaces given where C.W. was living prior to moving to the city of the rental unit. C.W. does not need to live in anything expansive. D.W. owns another rental unit building.

In further reply, J.W. testified that there are two other bachelor suites in the rental unit building that are next to the rental unit.

The Landlord submitted the following relevant documentary evidence:

- U-Haul order/reservation from May 31, 2022, to June 05, 2022, going from another country to a city near the city of the rental unit building
- An email about C.W.'s lease ending May 31, 2022
- A signed statement from C.W. about their intent to move into the rental unit
- Documents showing the Landlord is owned by D.W. and their wife

The Tenant did not submit relevant documentary evidence.

D.W. sought an Order of Possession effective 60 days after service on the Tenant.

### **Analysis**

I acknowledge that the Landlord previously issued a Two Month Notice to End Tenancy for Landlord's Use of Property which was cancelled on File 084. The Landlord was permitted to issue another Two Month Notice to End Tenancy for Landlord's Use of Property and has done so with the Notice. I must consider the validity of the Notice.

The Notice was issued pursuant to section 49(4) of the *Act* which states:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The relevant definitions are set out in section 49(1) of the *Act* as follows:

49 (1) In this section:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

(a) one individual, or

(b) one individual plus one or more of that individual's brother, sister or close family members;

The good faith requirement in section 49(4) of the *Act* is explained in RTB Policy Guideline 2A at pages one to two.

The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. There is no issue the Tenant received the Notice April 28, 2022. The Tenant disputed the Notice May 13, 2022, within time.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The Landlord also has the onus to prove the good faith requirement. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I am satisfied the Landlord has provided sufficient evidence to prove the grounds for the Notice including the good faith requirement. I find the Landlord has provided sufficient evidence to prove C.W. intends to move into, and live in, the rental unit because D.W. and C.W. provided affirmed testimony about this and the testimony is supported by the U-Haul order/reservation, email about C.W.'s lease and C.W.'s signed statement.

I acknowledge that there are other units in the rental unit building and that D.W. owns another building; however, I do not find these facts sufficiently compelling to call into question the evidence provided that C.W. intends to move into, and live in, the rental unit. There is no evidence before me that any of the other units owned by the Landlord are currently vacant such that C.W. could easily move into them instead. Further, the Landlord is entitled to possession of the rental unit in the circumstances described and is not required to seek possession of a different rental unit.

Based on the testimony of D.W. and documentary evidence, I am satisfied the Landlord is a family corporation as that term is defined in section 49(1) of the *Act*.

I am satisfied C.W. is D.W.'s son and therefore a close family member as that term is defined in section 49(1) of the *Act*.

Given the above, I am satisfied the Landlord had grounds to issue the Notice and did so in good faith.

J.W. did not raise an issue with the form or content of the Notice and therefore I am satisfied it complies with section 52 of the *Act*. Further, I have reviewed the Notice and confirmed it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

Section 49(2) of the *Act* states:

(2) Subject to section 51...a landlord may end a tenancy

(a) for a purpose referred to in subsection (4)...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

As stated, the Tenant received the Notice April 28, 2022. Given this, the effective date of the Notice is corrected pursuant to section 53 of the *Act* to be June 30, 2022.

Section 55(1) 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.

Given the above, I uphold the Notice and dismiss the Tenant's dispute of the Notice. The Landlord is entitled to an Order of Possession effective 60 days after service on the Tenant pursuant to section 55(1) of the *Act*.

### ***Filing Fees***

The parties can bear the cost of their own filing fees. The Tenant is not awarded the filing fee because the Tenant has not been successful in the Tenant's Application. The Landlord is not awarded the filing fee because the validity of the Notice and issuance of an Order of Possession was dealt with on the Tenant's Application and there was no need for the Landlord to file the Landlord's Application.

### **Conclusion**

The Landlord is issued an Order of Possession effective 60 days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the BC Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 09, 2022

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Residential Tenancy Branch