



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL; OPL, FFL**

### 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;

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

- An order of possession under a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to sections 49 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended with her son and agent ("the landlord"). The tenants attended ("the tenant"). Both parties were granted the opportunity to submit evidence. The hearing process was explained, and questions answered. No issues of service were raised.

### Issue(s) to be Decided

Are the parties entitled to the relief sought?

Background and Evidence*Background of Tenancy*

A copy of the tenancy agreement was submitted. The parties agreed on the following:

INFORMATION	DETAILS
Type of Tenancy	Fixed term ending March 31, 2022, then month-to-month
Beginning Date	April 1, 2021
Vacancy Date	ongoing
Rent payable on first of month	\$2,639.00
Security deposit	\$1,300.00
Pet deposit	none
Arrears of Rent	none

*Two Month Notice*

The landlord issued a Two Month Notice which was served on the tenant by registered mail effective June 28, 2022. The tenant acknowledged service and disputed the Notice within the timeline.

The parties agreed as follows:

INFORMATION	DETAILS
Type of Notice	Two Month Notice
Date of Notice	June 23, 2022
Effective Date of Notice	August 31, 2022

Date and Method of Service	Registered mail
Effective Date of Service	June 28, 2022
Reasons for Issuance	Landlord or landlord's spouse to occupy unit
Application for Dispute Resolution filed - date	July 12, 2022

### *Tenant's Dispute of Notice*

The tenant testified as follows. They did not believe the landlord issued the Notice in good faith but intend to re-rent the unit for a higher price. At the beginning of the tenancy, the landlord verbally promised a "long term rental" and the tenant expressed surprise to receive the Notice

The tenant submitted a written description of the efforts they made to be helpful to the landlord and to be a good tenant. Based on the understanding they would be living in the unit an indeterminate time, the tenant carried out considerable maintenance which was not required of them and cooperated with the landlord's requests regarding repairs.

They also testified that health issues made moving difficult and onerous. They were unable to find suitable alternative accommodations.

### *Landlord's Reply*

The landlord denied they ever promised the tenant a long-term rental.

The landlord testified as follows. Her son and his family live in the city in which the unit is located. She and her husband intend to retire in the unit. Her husband is arriving from outside the country on November 11, 2022, and they require the unit to be vacant so they can live there. The applicant stated she is living in a hotel and has stored her belongings, thereby incurring considerable expenses while waiting for the unit to be vacant.

In support of their claim that the Notice was issued in good faith, the landlord provided a written explanation as evidence. Attached to the letter are the referenced exhibits as

described. The landlord testified to the truth of the written statement and attachments, as follows:

I, Landlord, am the sole owner of the residential property currently being rented out. I do not own any other properties in Canada. I am a Canadian citizen who used to live in Vancouver. In 2004, I moved back to Taiwan with my Taiwanese husband, [name], such that he could take care of his aging mother there.

On August 11, 2020, my husband's mother passed away. My husband and I had no other familial obligations in Taiwan. Thus, we started planning to move back to Vancouver, in order to be reunited with my son, grandson, and granddaughter, who also live there.

That is why I decided to purchase this residential property in February 2021, as the long-term primary residence of my husband and me in Vancouver.

Exhibit A, dated February 18, 2021, demonstrates this intention as we authorized a Taiwanese immigration consultant to help me sponsor my non-Canadian husband for his immigrant visa to Canada. As we soon found out, sponsoring my husband's immigrant visa would take around 18 months to process. That is why I decided to hire a property management company to rent out my Vancouver residential property in April 2021 to the current tenants on a one-year lease, while we awaited the processing of my husband's Canadian immigrant visa. I should note that Exhibit A demonstrates that our intention to move to Vancouver long pre-dates our decision to rent the unit out in March 2021, and also long pre-dates our decision to increase the rent in May 2022.

I should also note that, as I own no other residential property in Canada, this residential property is the only logical choice as our primary residence. Therefore, our intention has always been to use this residential property as our primary residence from the beginning, rather than a long-term rental property.

After the tenant's initial one-year lease expired in April 2022, I agreed to renew it month to month, as my husband and I continued to await decision on his Canadian immigrant visa. We also increased the rent when the lease converted

into month-to-month, upon the recommendation of our property management company.

As Exhibit B (immigration pre-arrival notice) demonstrates, on June 20, 2022, our immigration consultant notified my husband that the approval of his immigrant visa was imminent. With that knowledge, we promptly gave the tenants two clear months' notice to vacate the property (Exhibit C), so that we could prepare to move in starting on September 1, 2022.

Soon, on July 7, 2022, my husband received confirmation of his Canadian permanent residency status (Exhibit D).

We also started arranging for our furniture and belonging in Taiwan to be shipped to Canada (Exhibit E, shipping contract).

I booked my one-way flight from Taipei to Vancouver (Exhibit F, flight itinerary), and landed in Vancouver as a returning resident on August 14, 2022 (Exhibit G, Canadian Customs declaration).

My husband also booked his one-way flight from Taipei to Vancouver (Exhibit H, flight itinerary).

I hope that by Exhibits A-H above, I have established by clear and convincing evidence that it has always been my intent, and it continues to be my intent, to use the residential property currently being rented out as the long-term primary residence of my husband and me.

We intend to live in it indefinitely for years if not decades, which is certainly well beyond the six-month minimum under the Residential Tenancy rules. We also will not rent it out anymore while we occupy it. Therefore, the tenants' conjecture that we intend only to occupy it for the short-term is unsupported by our factual evidence and by our actual intention. I should further point out that every day that the tenants are staying in my primary residence, I am prevented from using it, and it is costing me to arrange for alternative accommodation, as well as storage for my furniture and luggage which should have moved into my primary residence.

Therefore, I respectfully request the Residential Tenancy Branch to resolve this dispute in my favour as soon as possible by issuing an Order of Possession.

The landlord requested an Order of Possession effective immediately.

### *Tenant's Reply*

The tenant requested that if an Order of Possession were issued, the effective date be October 31, 2022.

### 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 the landlord promised the tenant verbally the tenancy would be long term. They objected to moving because they doubted the landlord intended to use the unit and believed the landlord was acting to obtain more rent. The tenant also testified that their health issues made moving difficult and onerous. They asserted the landlord was acting in bad faith.

*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 conjecture that the true motivation was increased rent.

I find the tenant has paid rent to the end of September 2022.

The landlord submitted complete, well prepared and concise materials supporting the landlord's claim that the husband of the landlord intended to occupy the unit with the landlord. I find the evidence credible and convincing. I accept the landlord's evidence in all aspects. 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 live in the unit with her husband. I also accept the landlord's husband is arriving on November 11, 2022 and the landlord is currently incurring expenses of storage and hotel because she does not have access to the unit.

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 her good faith intention is to live in the unit with her spouse.

Therefore, 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. I have dismissed the Notice. I therefore grant an Order of Possession.

I have considered Policy Guideline #54 *Ending a tenancy: Orders of Possession* which discusses the effective date to end a tenancy:

Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
  - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
  - e.g., If the tenant provides evidence of a disability or a chronic health condition

I have considered the testimony of the tenant regarding health considerations, although no supporting documents were submitted. I find the tenant has paid rent until the end of September 2022 in relatively short term tenancy. While I accept the landlord's assertion that any delay is inconvenient, I find this is a situation to exercise my discretion and to award an Order of Possession effective September 30, 2022.

I grant the landlord an Order of Possession effective September 30, 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.

Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

I grant the landlord an Order of Possession effective September 30, 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: September 12, 2022

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Residential Tenancy Branch