



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, MNDCT, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on May 10, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek the Landlord’s compliance with the legislation and/or tenancy agreement, compensation, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 23, 2022.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that each party provided to the other in advance. With the assurance that both parties received full disclosure from the other, I proceeded with the hearing.

### Preliminary Matter – relevant issues on review

The Tenant completed a paper application form on May 10, 2022 and submitted that to the Residential Tenancy Branch on that same date.

On the form the Tenant indicated they want the Landlord to comply with the *Act*, the regulations, or tenancy agreement. In that particular section on the form, they described the Landlord’s attempt to end the tenancy with a mutual agreement document. The Tenant also stated the difficulty they would face should the tenancy end and they raised a question about the Landlord’s address for service, which is the same as the rental unit address where the Landlord does not reside.

I consider the issue of the mutual agreement that was presented to the Tenant as part of my analysis of whether the tenancy shall end with the Landlord's service of the Two-Month Notice.

I give no consideration to the Tenant's own difficulty should the tenancy end. This also does not concern the Landlord's compliance with the *Act*, the regulations, and/or the tenancy agreement.

The Tenant raised the issue of the Landlord's address for service in the hearing. I find this is not an issue because the Landlord stated they received the Tenant's materials for this hearing, and the Landlord explained their reasons for using that address. This also is not related to the Landlord's compliance with the legislation and/or the tenancy agreement.

For these reasons, I dismiss this portion of the Tenant's Application without leave to reapply. What the Tenant wrote in their Application under this hearing is either subject to my analysis herein, or not relevant. I find this was the spot on the form where the Tenant added miscellaneous points, with no reference to a particular section of the legislation and/or tenancy agreement.

### Issues to be Decided

Is the Tenant entitled to cancellation of the Two Month Notice?

Should the Tenant be unsuccessful, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement. The tenancy started on October 1, 2007 for a rent starting at \$1,300 per month, with no rent increase over the course of this tenancy. The agreement contains standard terms that reflect what the *Act* has in place governing landlord-tenant rights and obligations.

The rental unit in question is the main floor at the rental unit property. The Landlord occupied the basement of the home which is a separate unit space. That basement was never rent during the entirety of this tenancy, with the Tenant remaining upstairs only.

#### *i. Two-Month Notice*

The Landlord signed the Two-Month Notice on April 27, 2022 and served this to the Tenant in person as detailed in their provided “Proof of Service” document. The document shows the move-out end-of-tenancy date as June 30, 2022. The Tenant did not move out on that date.

The second page of the document sets out that the Landlord will occupy the rental unit; specifically, this would be “The landlord or the landlord’s spouse.”

The Landlord explained in the hearing that they decided to move into the rental unit because their current living arrangement was a 1-bedroom-sized unit and they had “outgrew” that space. In March of 2022 they became 100% sure of this plan, previously prevented from doing so because of a number of other life issues.

The Landlord described speaking with the Tenant on April 22 and making their intentions known. This involved some discussion of renovations in the rental unit. They offered a Mutual Agreement to End Tenancy because of the long-term tenancy that had been in place. They were targeting July 2 for their move into the rental unit which was the upper level of the home they owned.

The Tenant pointed to the April 22 letter that the Landlord gave them with the proffered copy of the Mutual Agreement to End Tenancy. The letter states:

Further to our discussion today, this letter is your Two Month Notice to End Tenancy for Landlord’s Use of Property and/or Landlord selling the property (to be decided by Landlord, after

Tenant has moved out of the rental unit). Your move out day from the rental unit will be on July 1<sup>st</sup>, 2022 by 1:00pm.

...

Additionally, as per our agreement/discussion, I will not have Real Estate Agents or Contractors assessing/viewing your rental unit, until after your move out date on July 1, 2022.

In the hearing the Tenant reiterated that the Landlord had the intention to “possibly sell [the rental unit]”, contraindicating what appears on the Two-Month Notice as the reason for ending the tenancy. This mixed messaging from the Landlord constitutes them not issuing the Two-Month Notice in good faith.

In response to this in the hearing the Landlord stated they included the information about “Real Estate Agents or Contractors” not visiting the rental unit for the Tenant’s own peace of mind before moving out. The Landlord stated there was no possibility of selling the rental unit. The purpose of this April 22 letter was “part of a friendly discussion with the Tenant”, in order to inform the Tenant, they would not have to pay rent for two months prior to the end of the tenancy.

The Landlord also submitted a written account in which they described their conversation with the Tenant on April 22 in which they informed them of their intention to occupy the main floor of the house (i.e., the rental unit). They informed the Tenant of their design in having the home assessed by a contractor because there would be some renovations, with “the rest we would do eventually in the future, as time and budget permitted.” They reiterated to the Tenant that such an assessment would take place after the end of the tenancy.

The Landlord also stated:

[The Landlord] also loosely attended open houses in our neighbourhood in the months prior to giving [the Tenant] notice, to see if there was any interest in moving (we are aware that if we wanted to sell we would [have] told [the Tenant] that we were doing so, instead of serving [the Tenant] notice), so we wanted to look at all our options before making a final decision. We both decided that we did not want to buy and sell in this current market and that we liv the location of our current house and wanted to move into our home. Only once we were a 100% sure of our plan is when we gave our [Two-Month Notice] . . .”

Another letter from the Landlord dated April 27 is in the Tenant’s evidence. This was the Landlord attaching the Two-Month Notice after the Tenant did not accept the Mutual Agreement. The Landlord withdrew their offer of May free rent, instead informing the Tenant they were legally entitled to one month of free rent, which would be June. In their written statement the Landlord explained the need to compel the Tenant for their

answer on the proposed Mutual End document, with April 27<sup>th</sup> being the last date the Landlord could legally serve the Two-Month Notice in line with the intended end-of-tenancy date.

The Tenant in the hearing reiterated the inconsistency between the Landlord stating they were 100% sure in March that they would be moving into the rental unit yet indicating otherwise in their letter of April 22. That letter mentioned about contractors and real estate agents. The Tenant stated there was also “a lot of talk about renovations”, making this situation sound like a “renoviction”. In a summary statement in the hearing, the Tenant stated they were “just confused” regarding renovations vs. sale of the rental property home, with these being “two different things”, with neither of them being clear statements from the Landlord that they would be moving back into the rental unit.

In sum, the Landlord stated they were aware of the penalties granted under the *Act* where a landlord does not use the property for the reason stated on the Two-Month Notice; specifically, this is compensation of 12 months’ total rent to the Tenant.

*ii. compensation for monetary loss or other money owed*

The Tenant claims \$15,600, being the equivalent of 12 months rent at the current rent amount they pay monthly. In the application form they cited the short supply of available rent units in the same neighbourhood, with wait times “likely . . . longer than 2 months” and added transportation costs. They are seeking “the maximum allowable of 1 year of rent @ \$1300 per month as compensation . . . plus additional expenses.”

Analysis

*i. Two-Month Notice*

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

The *Act* s. 55 provides that I must grant to a landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss a tenant’s Application or uphold a landlord’s notice.

In this matter, the Landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient. I find the Landlord has met the burden to show they issued the Two-Month Notice in good faith. The Tenant did not provide sufficient evidence to show otherwise.

I find there is ample proof of the Landlord's intention to reside in the rental unit. I find the Landlord's statements on where they are at in their life, and their weighing of various options of possibly selling the property versus a move back to the rental unit property carry weight to show they are not acting in bad faith here. The Tenant submits that some statements concerning renovations and a possible sale of the home show bad faith; however, I disagree with their assertions. I give weight to the Landlord's explanation in their written account that did not conflict with the Landlord's simpler explanation in the hearing of the conversations had with the Tenant.

The Landlord attempted to end the tenancy more amicably. In their messaging to the Tenant on this point the Landlord had stated the Tenant would not be interrupted by "Real Estate Agents or Contracts" assessing or viewing the rental unit. I find this statement does not constitute firm plans for either a sale in the near term, nor renovations with the intention to improve the rental unit for a near-term new rental agreement with other tenants. Additionally, I find it legitimate that the Landlord would desire an assessment of the home; this would necessarily entail a visit from some contractor. The Landlord is also free to make renovations as they see fit for their move back into the rental unit; I find it plausible that those renovations could coincide with the move.

In sum, I accept the Landlord's statement as fact that they did not serve the Two-Month Notice to the Tenant until they were 100% sure that they would be moving into the rental unit themselves. They maintained occupancy of the downstairs rental unit over this long-term tenancy; I find this bolsters their claim that they were sure they wanted the complete home to themselves. I find nothing bars them from possessing the rental unit in line with this plan.

I find this is a situation where the Landlord initiated open discussions with the Tenant, in which their options were frankly shared with the Tenant. I find the Tenant has now used parts of these discussions and taken certain statements out of context to show the Landlord is acting in bad faith by trying to end this tenancy.

For these reasons, I uphold the Two-Month Notice issued on April 27, 2022 and find the Landlord issued it in good faith, minus evidence to the contrary. On my review, the

Two-Month Notice complies with the s. 52 requirements on form and content. Given this finding, the Landlord here is entitled to an order of possession on the effective date.

The tenancy shall end with service of the Order of Possession.

ii. compensation for monetary loss or other money owed

The *Residential Tenancy Policy Guidelines* are in place to help parties understand issues and provide for a practical statement of the policy intentions of the *Act*.

Regarding compensation the guideline #16 on 'Compensation for Damage or Loss' sets out that s. 7 provides for compensation where a party who does not comply with the *Act*. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

The Tenant here did not suffer damage or loss with a result of monetary loss to them. They did not provide proof of an amount or value of monetary loss. I find the Tenant here pre-emptively made a claim for compensation, and that is not the purpose of the *Act*. I dismiss this piece of the Tenant's Application in its entirety, without leave to reapply.

Because the Tenant was not successful in their Application, they are not entitled to reimbursement of the \$100 Application filing fee.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application, without leave to reapply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the tenant. The Landlord must serve this Order of Possession on the Tenant. Should the Tenant fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

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

Dated: October 7, 2022