



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC

Pursuant to section 58 of the *Residential Tenancy Act*, I was designated to hear an application regarding a tenancy. On November 2, 2022, the tenant applied for:

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 31, 2022 (the Two Month Notice); and
- an order for the landlord to comply with the Act, Regulation, or tenancy agreement.

The hearing teleconference was attended by the landlord and their family members (collectively, "the landlord") who were affirmed and advised of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings. Neither the tenant nor a representative attended the hearing, though the teleconference line remained open until 11:10 a.m.

The landlord testified that to the best of their knowledge the tenant no longer resides in the rental unit. The landlord stated she was unsure as to the date the tenant vacated the unit, stating that the tenant was transported to hospital by ambulance on January 22, 2022.

The landlord testified they sought an order of possession.

### Preliminary Matter

As the tenant did not attend the hearing, I dismiss with leave to reapply her application for an order for the landlord to comply with the Act, Regulation, or tenancy agreement.

### Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the Two Month Notice?
- 2) If not, is the landlord entitled to an order of possession?

### Background and Evidence

The landlord confirmed the following particulars regarding the tenancy. It began August 1, 2016; rent is \$1,300.00, due on the first of the month; and the tenant paid a security deposit of \$550.00 which the landlord still holds.

The landlord testified she occupies the upper part of the property, and the rental unit is in the lower part of the property.

A copy of the Two Month Notice is submitted as evidence. The Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of December 31, 2022, states the reason for ending the tenancy, and is in the approved form. The Two Month Notice indicates the tenancy is ending because the landlord or the landlord's spouse will occupy the unit.

The landlord testified they served the Two Month Notice on the tenant in person on October 31, 2022.

The landlord testified that she is 83 years of age, and is experiencing mobility challenges. The landlord testified that their upper unit is accessed by stairs, which she is now having difficulty with. The landlord testified that her spouse lives in residential care, and is not able to visit with family at the property due to the stairs. The landlord testified that she intends to occupy the lower unit because it will be much easier for her and her spouse as there are no stairs to access the lower unit, and the landlord will also be able to access her freezer, recycling, and garbage without using the stairs. The landlord testified that another reason why she wishes to occupy the lower unit is that the upper unit is extremely hot in the summer, and the lower unit is much cooler.

The landlord testified that rent has not been paid for March 2023.

### Analysis

I find the landlord served the Two Month Notice on the tenant in person on October 31, 2022, and in accordance with section 88 of the Act. I find the Two Month Notice meets the form and content requirements of section 52 of the Act.

As described in Residential Tenancy Branch Rule of Procedure 6.6, where a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the notice is based.

I accept the landlord's affirmed undisputed testimony that she intends to occupy the rental unit as its lack of stairs will accommodate the age-related mobility issues of the landlord and her spouse, improving the landlord's quality of life and permitting her spouse to visit with his family in their home.

Considering the foregoing, I find on a balance of probabilities that the landlord has met the onus of proving the reason for the Two Month Notice, that being that she will be moving into the rental unit, as allowed by section 49 of the Act.

The Two Month Notice is upheld. The landlord is entitled to an order of possession, in accordance with section 55 of the Act.

### Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession. The order of possession must be served on the tenant. The order is effective two days after it is received by the tenant. The order of possession may be filed and enforced as an order of the Supreme 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: March 20, 2023

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Residential Tenancy Branch