



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order cancelling a Two Month Notice to End the Tenancy for Landlord's Use, dated November 25, 2022 ("Two Month Notice"); and to recover her \$100.00 Application filing fee.

The Tenant, M.L., the Landlord W.Z., the Landlord's spouse, Z.L., and an agent for the Landlord, E.L. ("Agent"), appeared at the teleconference hearing. The Agent was representing his mother, the Landlord, because of the Landlord's difficulty with English. The Landlord's spouse was present for mental support.

The Tenant and the Agent gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

### Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Tenant entitled to Recovery of her \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the fixed term tenancy began on July 1, 2021, ran to June 30, 2022, and then operated on a month-to-month basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a current monthly rent of \$1,925.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$950.00 and no pet damage deposit. The Agent confirmed that the Landlord still holds the security deposit in full.

The Parties agreed that the Landlord served the Tenant with the Two Month Notice, which was signed and dated November 25, 2022, and which has the rental unit address. The Two Month Notice was served by leaving a copy in the mail box or slot on November 25, 2022, and it has an effective vacancy date of February 1, 2023. The Parties agreed that the Two Month Notice was served on the grounds that the Landlord or the Landlord's close family member – the child of the Landlord in this case – would occupy the rental unit.

In the hearing, the Agent explained the reason for issuing the Two Month Notice, saying:

It's for my personal use, as I'm the son of the owner. So my mother has been having a physical condition for quite a few months - high blood pressure - which is causing dizziness and headaches. And my son is attending school just across the street from mother's house. I have a crazy occupation as an architect. I have had a lot of travelling back and forth for last few months. We think it is a good idea that I move into the unit. I can help take care of my own son and my own mother.

The Tenant had no comments about what the Agent said, until I asked her why she had not moved out yet. The Tenant replied:

There is nothing against his opinion; I understand how he wants to move in. The reason why I can't move out is because, frankly I have been searching for a new place in my budget. It's very hard to find a place now, and there are not many listings for the one bedroom. And my budget makes it hard to find a place. I have a business, but it's not going well right now. So, I can find a one bedroom for the end of August, but I need more time to move.

The Agent responded:

I do not really have any comments. I understand it's a difficult market, but there are some things that are out of our control now. I understand the market has gone up, and it's not going down any time soon, so there's not much I can say or do to help.

The Parties did not have any further testimony to provide.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[emphasis added]

I find from the testimony in the hearing that the Agent needs to move into the rental unit to take care of the Landlord, his mother, as well as his son, who attends a school across the street. I find that this scenario is consistent with the requirements of section 49 of the Act. I also find that the Two Month Notice is consistent with section 52, as to form and content. As a result, I find that the Landlord has met the burden of proving the validity of the Two Month Notice on a balance of probabilities.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. I, therefore, **grant the Landlord an Order of Possession** for the rental unit, pursuant to section 55. As the effective vacancy date of the Two Month Notice has passed and the Tenant is overholding the rental unit, **the Order of Possession is effective two days after service of this Order** on the Tenant.

In order to provide clarity for both Parties, and in the hopes of preventing future disputes, the Parties should be aware that pursuant to section 51 of the Act, a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord, on or before the effective date of the landlord's notice, an amount that is the equivalent of one month's rent payable under the tenancy agreement. The tenant may withhold this amount from the last month's rent or otherwise recover this amount from the landlord, if rent for the last month has already been paid.

Further, in addition to the one month's compensation due to the Tenant under section 51 (2), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date, the Landlord must pay the Tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement.

### Conclusion

The Tenant is unsuccessful in her Application, as the Agent provided sufficient evidence to establish the validity of the Two Month Notice on a balance of probabilities. The **Tenant's Application is dismissed wholly without leave to reapply.**

**Pursuant to section 55** of the Act, I grant an **Order of Possession** for the rental unit to the Landlord **effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

**Should the Tenant fail to comply with this Order**, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 17, 2023

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Residential Tenancy Branch