



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding RAINE CRANBERRIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **OPL**

### Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order of Possession for a Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit (the "Two Month Notice") pursuant to Sections 49, 55 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord personally served the Two Month Notice on November 20, 2022. I find that the Two Month Notice was served on the Tenant on November 20, 2022 pursuant to Section 88(a) of the Act.

The Landlord confirmed that he personally served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence (including a copy of the Two Month Notice) for this hearing on February 22, 2023 (the "NoDRP package"). The Landlord provided a delivery witness declaration signed by his brother attesting to service of the

NoDRP package on the above date. I find that the Tenant was served with the NoDRP package on February 22, 2023, in accordance with Section 89(1)(a) of the Act.

### Issue to be Decided

Is the Landlord entitled to an Order of Possession for the Two Month Notice to End Tenancy For Landlord's Use of Property?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that he purchased the property in September 1997. The Tenant was the previous owner of the residential property, and he remained in the rental unit as a Tenant at that time. The Landlord testified that this tenancy began as a fixed term tenancy, then at the end of the fixed term, the tenancy continued on a month-to-month basis. Monthly rent is \$800.00 payable on the fifteenth day of each month. No security deposit or pet damage deposit were collected at the start of the tenancy.

The reason to end tenancy noted on the Landlord's Two Month Notice was 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. The effective date on the Two Month Notice was February 1, 2023.

The Landlord bought the property as a farm 26 years ago. The Landlord testified that he spent 20 years building the farm, clearing the land, and now the Landlord and his wife want to relocate to the farm to operate it. The Landlord lives a distance from the property and he stated it will be easier to run if he is actually there.

The property is owned by the Landlord's company, and the Landlord is the sole proprietor of the company owning 100% of all voting shares in it. The Landlord's company is on title; hence the reason, he put the company's name on the Two Month Notice.

The Landlord seeks an Order of Possession for May 1, 2023.

## Analysis

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 49 of the Act is the relevant part of the legislation for this claim. It states:

### ***Landlord's notice: landlord's use of property***

**49** (1) *In this section:*

...

***"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;*

***"landlord"*** *means*

...

- (b) *for the purposes of subsection (4), a family corporation that*
  - (i) *at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and*
  - (ii) *holds not less than 1/2 of the full reversionary interest;*

...

- (2) *Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy*

- (a) *for a purpose referred to in subsection (3), (4) or (5) 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*

...

- (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.*

...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*
- (8) *A tenant may dispute*
  - (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*
  - (b) *a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.*
- (9) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant*
  - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
  - (b) *must vacate the rental unit by that date.*

The Landlord testified to personally serving the Tenant with the Two Month Notice on November 20, 2022. I find that the Two Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant did not apply for dispute resolution within 15 days of receipt of the notice.

The Landlord's undisputed evidence is that the company is on title for the residential property, and the Landlord testified that him and his wife intend in good faith to move onto the property to work the farm and occupy the rental unit. I find the Tenant did not dispute the Two Month Notice and is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I uphold the Landlord's Two Month Notice.

I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

***Order of possession for the landlord***

**55** ...

(2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

...

I previously found that the Tenant did not apply to dispute the Two Month Notice, and now the time for making that application has expired. Pursuant to Section 55(4)(a) of the Act, I find the Landlord is entitled to an Order of Possession which will be effective on May 1, 2023 at 1 p.m.

### Conclusion

The Landlord is granted an Order of Possession pursuant to Section 55(4)(a) of the Act, which will be effective on May 1, 2023 at 1:00 p.m. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in 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 Act.

Dated: April 04, 2023

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Residential Tenancy Branch