



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the tenant was accompanied by an Advocate. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

During the course of the hearing the parties agreed that neither party has provided any evidentiary material to the other party. Any evidence that a party wishes to rely on must be provided to the other party. Since neither party has complied, I decline to consider any of the evidence.

### Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on June 1, 2008 and reverted to a month-to-month tenancy after May 31, 2009 and the tenant still resides in the rental unit. Rent in the amount of \$930.00 was payable on the 1<sup>st</sup> day of each month, which has been increased and is now \$1,050.00 per month and there are no rental arrears. At

the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$465.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that on January 7, 2023 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by registered mail. The landlord testified that it is dated January 6, 2023 and contains an effective date of vacancy of March 31, 2023. The reason for issuing it is: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)," specifying the landlord or the landlord's spouse.

The landlord had a good job, and about 2 years ago the parties talked and if the tenant would have moved at that time, it would not have been so difficult to find a place. However, the landlord was laid off on April 30, 2021 and is having difficulty paying the mortgage.

**The tenant** testified that rent was increased to \$970.00 years ago, then to \$1,000.00 and then to \$1,050.00 without giving a Notice of Rent Increase.

The landlord told the tenant that the landlord was terminated from her employment and would have to sell the rental unit. The tenant increased the rent to \$1,050.00 in hopes of staying in the rental unit.

The rental unit is a 1 bedroom condominium. The tenant would be homeless if the landlord takes possession. The tenant has applied to BC Housing and cannot afford another place. The tenant takes care of her mother who is in a long-term care home, and the tenant is currently undergoing bladder cancer tests.

#### SUBMISSIONS OF THE LANDLORD:

The landlord was not aware that the landlord's evidence was required to be served to the tenant. The landlord received EI benefits for the first year after being laid off, but that has now finished, and the landlord's financial position is not good.

#### SUBMISSIONS OF THE TENANT'S ADVOCATE:

The tenant has mentioned to the Advocate that in September, 2021 the landlord told the tenant to move out, without giving any notice to end the tenancy. The landlord has

given contradicting reasons for ending the tenancy verbally, such as selling, renovating and family moving in. Finally the Two Month Notice to End Tenancy for Landlord's Use of Property was served. The Advocate provided a copy of the Notice, but did not include it in the package served to the landlord.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in that Notice.

The law also requires a landlord to use the approved form when ending a tenancy. In this case, none of the evidence provided can be considered.

I accept the undisputed testimony of the landlord that her financial position has changed, however I am not satisfied that the landlord has established that the notice to end the tenancy was given in the approved form. Therefore, I cancel it and the tenancy continues.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount. The landlord must be served with the order, which can be filed in the Provincial Court of British Columbia, Small Claims division as a judgment. Alternatively, I order that the tenant be permitted to reduce rent for a future month by that amount.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act*, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

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: May 09, 2023

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Residential Tenancy Branch