



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

### Dispute Codes:

For the landlord: OPL FFL  
For the tenant: CNL-MT MNDCT OLC FFT

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession for landlord's use of property and to recover the filing fee. The tenants applied to for more time to make an application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice), for a monetary claim of \$7,300, for an order directing the landlord to comply with the Act, and for the filing fee.

Those listed on the cover page of this decision attended the hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed testimony evidence and to make submissions to me.

Both parties confirmed that they received documentary evidence from the other party and had the opportunity to review that documentary evidence prior to the hearing. I find the parties were served in accordance with the Act.

### Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the tenant's application, the most urgent of which is the application to set aside the 2 Month Notice. I find that not all the claims on the tenant's application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to

set aside the 2 Month Notice and their filing fee. The balance of the tenant's application is **dismissed, with leave to re-apply**.

### Issues to be Decided

- Should the 2 Month Notice be cancelled or upheld?
- If upheld, is the landlord entitled to an order of possession under the Act?
- Is either party entitled to the filing fee?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on May 1, 2020. Monthly rent in the amount of \$1,300 is due on the first day of each month. A security deposit of \$650 was paid by the tenant at the start of the tenancy.

There is no dispute that a 2 Month Notice was served on the tenant. The 2 Month Notice is dated April 26, 2023. The effective vacancy date on the 2 Month Notice is listed as June 30, 2023. The tenant claims they were never served with the 2 Month Notice due to not having a mail key so as a result, the parties were advised that I would consider the merits of the 2 Month Notice in the interests of fairness to the tenant.

The reason listed on the 2 Month Notice is as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	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).
Please indicate which close family member will occupy the unit.	
	<input type="radio"/> The landlord or the landlord's spouse
	<input checked="" type="radio"/> The child of the landlord or landlord's spouse
	<input type="radio"/> The father or mother of the landlord or landlord's spouse

The landlord's son, GB, attended the hearing and affirmed that they intend to move to the basement rental unit so that that they can enjoy the 3 bedrooms as his girlfriend will move in with him, and the other 2 bedrooms will be for their DJ/sound recording business, in which soundproofing will be added to that room, and the remaining bedroom will be for his realtor business. GB confirmed that they will not pay rent but will pay towards their parents' mortgage payments.

The tenant advocate stated that the tenant feels the 2 Month Notice is not sincere but had no proof of bad faith during the hearing. The tenant advocate mentioned a previous issue three years prior in terms of 2020 pandemic payments, and all parties were advised that it is not related to the 2 Month Notice before me.

### Analysis

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

**2 Month Notice to End Tenancy for Landlord's Use of Property** – The reason indicated on the 2 Month Notice was supported by direct testimony from GB. Based on the above and on the balance of probabilities, **I find** that the landlord has met the burden of proof and **I find** the 2 Month Notice issued by the landlord to be valid. I find the tenant failed to provide any evidence of bad faith. Therefore, **I dismiss** the tenant's application to cancel the 2 Month Notice and I **uphold** the landlords' 2 Month Notice dated April 26, 2023. Section 55 of the Act states:

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

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above, and the fact that I find the 2 Month Notice complies with section 52 of the Act, **I grant** the landlords an order of possession effective **October 31, 2023 at 1:00 PM**. I have used my discretion under the Act to delay the order of possession from the end of September to the end of October to give the tenant more time to find a new residence.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee of **\$100** under section 72 of the Act. **I authorize** the landlord to retain \$100 from the tenant's \$650 security deposit. I find the new security deposit balance is \$550 effective immediately under section 62(3) of the Act.

### Conclusion

The tenant's application to cancel the 2 Month Notice is dismissed. The landlord's 2 Month Notice is upheld. The landlord has been granted an order of possession effective October 31, 2023 at 1:00 PM. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Should the tenant fail to vacate the rental unit, the tenant is cautioned that they can be liable for all enforcement costs including court costs and bailiff fees.

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: September 29, 2023

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Residential Tenancy Branch