



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, MNDCT, RR, PSF, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order that the landlord comply with the *Act* or the tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing. The tenant was accompanied by a support person, and the landlord was accompanied by the landlord's spouse. The parties and the landlord's spouse each gave affirmed testimony, and were given the opportunity to question each other and to give submissions.

At the commencement of the hearing I alerted the parties to the Rules of Procedure which specify that multiple applications contained in a single application must be related, and I found that the primary application seeks to cancel a notice to end the tenancy for landlord's use of property. The hearing focused on that application alone.

The parties do not agree that all evidence has been exchanged, however I found that the evidence in dispute was not in relation to the notice to end the tenancy. No other

issues with respect to service or delivery of documents or evidence were raised, and all evidence I find relevant to the notice to end the tenancy is considered in this Decision.

Also, during the course of the hearing I learned that a hearing had convened before another Arbitrator on October 20, 2023. I advised the parties that I would review the Decision resulting from that hearing because it is important that I do not make any findings or orders that have already been adjudicated upon.

### 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* and in good faith?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began in mid-April, 2023 and the tenant still resides in the rental unit. There is no written tenancy agreement, however rent in the amount of \$1,800.00 per month is payable which was effective on January 1, 2024. At the outset of the tenancy the landlord collected a pet damage deposit in the amount of \$500.00, which is still held in trust by the landlord, and no security deposit was paid. The rental unit is a suite in the lower level of the landlord's home, and the landlord resides in the upper level.

The landlord further testified that on October 23, 2023 the landlord served the tenant with a Two Month Notice to End Tenancy For Landlord's Use of Property by email. A copy of the first 2 pages of a 4-page form have been provided by the tenant for this hearing, and it is dated October 23, 2023 and contains an effective date of vacancy of December 31, 2023. The reason for issuing it states: 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 does not have any evidence that the tenant agreed to the service of legal documents by email, and the landlord has not provided a copy of the Notice served, nor does the landlord know how many pages were served.

The landlord also testified that the landlord's evidence was put on the tenant's front door on January 4, 2024.

No one will move into the rental unit once it's vacant; it will be empty and not rented again. The landlord might put a sewing room in there.

The landlord served the Notice 3 days after the hearing in October, 2023 because she didn't know the process very well. The landlord also testified that the landlord was not aware of consequences under the law if the landlord fails to use the rental unit for the stated purpose.

**The landlord's spouse** testified that the tenancy began in mid-April, 2023 for rent of \$800.00 for April and \$1,600.00 for the month of May, 2023. Rent was \$1,800.00 per month but the landlord gave the tenant a break for the month of May.

The Decision from the hearing on October 20, 2023 sets rent at \$1,800.00 when a student is housed in the rental unit and \$1,600.00 per month when the tenant is not housing a student.

The landlord's spouse does not know how many pages of the Notice were served to the tenant. The landlord's daughter handed it to the tenant on October 23, 2023, or witnessed it being handed to her by the landlord.

The landlord and spouse intend to make some repairs and leave the rental unit vacant, or maybe a sewing room and a grandson maybe in the future.

The tenant has sent nasty emails to the landlord, has a lot of garbage outside the suite, and is generally not a nice person.

**The tenant** testified that the Notice was not served in person and the tenant has never met the landlord's daughter. The landlord has served 6 notices in 8 months. The landlord has completely avoided the tenant and said that all correspondence must be by email. The landlord's spouse made the tenant go outside to be served, and evidence was not posted to the door, but left on the doorstep in a bag.

The tenant has asked for a written agreement on 2 occasions but the landlord did not want to provide it and believed she could raise the rent whenever. Rent was agreed at \$1,800.00 per month when or if the tenant housed a student, who moved in on November 12, 2023. The tenant paid the additional \$200.00 on November 12, 2023 and has been paying full rent.

#### SUBMISSIONS OF THE LANDLORD:

The landlord feels harassed, and just wants the suite back.

#### SUBMISSIONS OF THE TENANT:

Other than a few emails sent to the landlord that they claim is harassing, the tenant has respected the landlord and spouse. They said they only wanted to correspond by email. The tenant doesn't knock on their door like they do to the tenant.

#### 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 *Act*, which can include the reason(s) for issuing it. Further, in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in that Notice commencing within a reasonable time after the effective date of the Notice and for at least 6 months duration. The consequences for failing to act in good faith are quite severe.

The landlord must have no ulterior motive. To end the tenancy because the landlord feels harassed or finds the tenant to not be a nice person is an ulterior motive, unless the landlord establishes that the landlord will occupy the rental unit.

The law also requires the Notice to be in the approved form. I have reviewed the 2 pages provided as evidence by the tenant. The landlord has not provided a copy. Neither the landlord nor the landlord's spouse has any idea how many pages were served, and in the absence of any evidence that the full 4-page approved form was served, I cannot uphold the Notice. Therefore, I cancel it and the tenancy continues until it has ended in accordance with the law.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant may reduce rent for a future month by that amount, or may serve the order to the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

The balance of the tenant's application is dismissed with leave to reapply.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy For Landlord's Use of Property dated October 23, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it.

The balance of the tenant's application is hereby dismissed with leave to reapply.

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: January 12, 2024

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Residential Tenancy Branch