



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **Decision**

**Dispute Codes:** CNL MNDC FF

## **Introduction**

This hearing dealt with an application by the tenant seeking to cancel a notice to end tenancy, monetary compensation for damage or loss under the Act and recovery of the filing fee for the cost of her application.

## **Issue(s) to be Decided**

Is the notice to end tenancy valid?

If so, is the landlord entitled to an order of possession?

Is the tenant entitled to the monetary compensation claimed?

Is the tenant entitled to recovery of the filing fee?

## **Background and Evidence**

The tenancy began on July 1, 2007, originally as a one year fixed term lease, with rent due in advance on the last day of the prior month. The tenant paid rent for July and August 2008. On August 5, 2008 the landlord gave the tenant a notice of rent increase of \$100, and on August 14, 2008 the landlord gave the tenant a one month notice to end tenancy for cause, citing a breach of the tenancy agreement when the tenant did not sign a new one year lease after the first lease expired. The tenant successfully disputed both the rent increase and the notice to end tenancy.

On September 3, 2008 the landlord served the tenant with a notice to end tenancy for unpaid rent. The tenant also successfully disputed that notice, in a teleconference hearing conducted on October 1, 2008.

On October 6, 2008 the landlord served the tenant with a two month notice to end tenancy for landlord's use, citing the landlord's intention to convert the rental unit for a caretaker's use. The notice indicates an effective date of December 7, 2008; however, in the hearing the landlord acknowledged that they are now aware that the correct effective date would be December 31, 2008. This two month notice is the notice that the tenant applied to cancel in this application.

On November 2, 2008 the landlord served the tenant with another notice to end tenancy for unpaid rent.

The tenant submitted that she does not believe that the landlord intends in good faith to convert her rental unit into a caretaker's unit, because the rental unit is one of three units in a rental house, and it does not require a caretaker. The tenant submitted that the landlord just wants to get rid of her by any means possible. In regard to the monetary claim, the tenant submitted that the landlord has been disturbing the tenant's right to quiet enjoyment by constantly serving her with eviction notices and dropping by the rental unit, and on that basis the tenant seeks compensation of \$500.

The landlord's response to the two month notice was that both landlords are very busy and they own several rental properties. They have several concerns about this rental property and they want to have an on-site caretaker. The rental unit in question is the most appropriate one as it is the smallest of the three and it is the only one where the current tenant is not locked in to a fixed-term lease. In the hearing the tenant requested an order of possession pursuant to the notice. The landlord requested that the order of possession be effective December 31, 2008 at noon. The tenancy agreement indicates that the tenancy will end at 1:00 pm on the last day of the tenancy unless otherwise agreed upon by the landlord and the tenant. The landlord's response to the tenant's claim for compensation is that the notices to end tenancy for unpaid rent were as a result of the tenant's failure to pay rent on time, and the landlord had to attend at the rental unit because the tenant would not provide her phone number.

### **Analysis**

In regard to the two month notice to end tenancy, Residential Tenancy policy guideline # 2 discusses the good faith requirement and sets out a two part test: first, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. In this case, I find that while the landlord's actions infer some desire to evict the tenant, the landlord does intend to use the premises for the purpose stated on the notice and that purpose is the primary motive for issuing the notice. Therefore, I find that the two month notice to end tenancy is valid, and I grant the landlord an order of possession, effective December 31, 2008, as per the corrected effective date on the notice, and at 1:00 pm, as per the tenancy agreement.

In regard to the tenant's monetary claim, I find that the actions of the landlord did not deprive the tenant of quiet enjoyment such that the tenant is entitled to monetary compensation.

### **Conclusion**

The tenant's application is dismissed. The tenant is not entitled to recovery of her filing fee.

The landlord is entitled to an order of possession, effective December 31, 2008. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Dated: November 17, 2008.