



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes CNL, RR, O

### Introduction

This was the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to s. 49 of the Act. The tenant also sought an order allowing her to reduce rent and other unspecified relief.

The tenant attended the hearing. The two landlords attended with an agent. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and to make submissions.

Service of the tenant's application and notice of hearing, and of the respective parties' evidence, was not at issue.

At the outset of the hearing I advised the parties that I would be severing the tenant's application to cancel the 2 Month Notice from the tenant's other applications. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. Here, the tenant also seeks a rent reduction, but the more urgent relief sought by the tenant is an order setting aside the 2 Month Notice. The rent reduction is not so related to the question of whether or not the tenancy will continue to require determination during these proceedings. Accordingly, I dismiss the balance of the tenant's application, with leave to re-apply.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

If not, should the landlord be granted an order of possession?

### Background and Evidence

A copy of the tenancy agreement was in evidence. This tenancy began in 2012 and is currently a month to month tenancy. Rent of \$1,300.00 is due on the first of the month.

The 2 Month Notice, dated March 19, 2017, was personally served on the tenant that same date. It has an effective date of May 31, 2017. The tenant filed her application to dispute the 2 Month Notice on March 20, 2017.

The landlord's agent stated that the landlords are separating and that they have a separation agreement in place. Under the terms of that agreement the female landlord will own the duplex in question. The family home has been sold and the new owners take possession on May 19, 2017. The female landlord intends to occupy the rental unit in question in the duplex. A copy of the contract of purchase and sale for the family home was submitted in evidence. Also in evidence was an affidavit sworn by the landlords setting out the same things that their agent recounted in his submissions.

The tenants questioned the landlords' motives. She submitted photographs of the duplex, which is old and imperfectly maintained, along with photographs of the landlords' family home, which is more costly and well-maintained, and stated that she is surprised that the female landlord would actually want to move into one of the units in the duplex. The tenant submitted that the duplex rental unit has not been properly maintained, that the windows leak and that there has been an ongoing mold problem. Photographs of the windows and of mold on the ceiling were included in the tenant's evidence.

The tenant also testified that when the female landlord visited the rental unit she commented that it was in need of repairs, and that she was going to do them. The tenant suggested that this means that the landlord intends to renovate and then substantially raise the rent.

The tenant confirmed that the female landlord is still referring to the male landlord as her husband. She also testified that she received the 2 Month Notice after asking the landlords to make some repairs to the rental unit, and submitted that she was being targeted for eviction because she had asked for these repairs. The tenant further stated that the renters in the other unit in the duplex are significantly disruptive, that the landlords are aware of this, and that she does not understand why the landlords would terminate her tenancy rather than theirs.

Lastly, the tenant testified that the landlords have disrupted her right to quiet enjoyment by yelling on at least one occasion and by failing to give proper notice when they needed to enter the rental unit.

In response to the tenant's submissions the landlords maintained that they are indeed separating after a long marriage and that the female landlord intends in good faith to move into the rental unit in question. The female landlord said that she chose this particular unit rather than the other unit in the duplex because the other has a large rock in the crawl space and a large rock in the garden and less floor space.

### Analysis

Section 49(6) of the Act allows a landlord to end a month to month tenancy for specified reasons by giving notice to end the tenancy effective on a date not earlier than 2 months after the date the tenant receives the notice, and the day before the day in the month that rent is payable.

Section 49(3) allows a landlord to end a tenancy in respect of a rental unit if the landlord intends in good faith to occupy the rental unit. The onus is on the landlord to prove the reasons cited in the 2 Month Notice. If the tenant calls the landlord's good faith into question, the landlord must also establish that it truly intends to occupy the rental unit and it does not have an ulterior motive that negates the honesty of intention: Residential Tenancy Policy Guideline #2 ("Good Faith Requirement When Ending a Tenancy").

Based on the testimony of all of the parties and the documentary evidence submitted, and on a balance of probabilities, I accept that the female landlord truly intends to occupy the rental unit. The tenant has questioned the landlords' intentions, but I do not accept the tenant's submission that the female landlord would not occupy the rental unit after separation because over the course of her marriage she has occupied a more comfortable home. Nor do I accept that the fact that the female landlord still refers to the male landlord as her husband suggests that they are not actually separating. The tenant's submissions do not in my opinion call the landlords' good faith into question. Additionally, I do not accept that the tenant has been targeted for eviction. I accept the female landlord's evidence that the tenant's unit is simply preferable.

The tenant's application to cancel the 2 Month Notices is dismissed. Section 55 of the Act requires me to issue an order of possession when the tenant's application to dispute a notice to end tenancy is dismissed. I find that the 2 Month Notice complies with s. 52 of the Act, and I therefore issue an order of possession for the effective date of the 2 Month Notice. This tenancy will end at 1:00 on May 31, 2017.

It is always difficult when a tenancy ends without the consent of both the landlord and the tenant. However, the Act allows a landlord to end a tenancy with two months' notice and one months' rent as compensation when the landlord wishes to occupy the rental unit. The length of notice and the monetary compensation is meant to mitigate the difficulty of the transition.

### Conclusion

The tenant's application for an order cancelling the 2 Month Notice is denied.

The landlords' 2 Month Notice is upheld. This tenancy will end at 1:00 pm on May 31, 2017. I grant an order of possession to the landlords to that effect pursuant to s. 55 of the Act. Should the tenant or anyone on the premises fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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

All of the parties are required to abide by the Act, regulation, and tenancy agreement for the duration of the tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: May 2, 2017

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Residential Tenancy Branch