



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

CNC, CNL, MT

### **Introduction**

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a One Month Notice to End Tenancy for Cause, to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property, and for more time to apply to cancel a Notice to End Tenancy.

The Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord approximately two weeks ago. The Landlord acknowledged receipt of these documents.

On March 07, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on March 07, 2019. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

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

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Should the Tenant be granted more time to apply to cancel a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, and, if so, should that Notice be set aside?

### **Background and Evidence**

The Landlord and the Tenant agree that this tenancy began on April 01, 2016 and that rent of \$1,200.00 is due by the first day of each month. The parties agree that rent has been paid for April of 2019.

The Landlord and the Tenant agree that on December 12, 2018 the Landlord personally served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property and that the Two Month Notice to End Tenancy declared that the rental unit must be vacated by February 28, 2019.

The Landlord and the Tenant agree that the Landlord attached a paper to the Two Month Notice to End Tenancy which read:

This is a written notice from the landlord to the tenant to end the tenancy as required by the city bylaw. City bylaw does not allow the landlord to have more than two tenants in the same house. You are hereby notified to vacate the premises.

The Landlord stated that he attached the aforementioned information to the Two Month Notice to End Tenancy because the Notice did not provide this, or a similar reason, for ending the tenancy.

The Tenant stated that due to a language barrier she did not understand that she had to dispute the Notice to End Tenancy within fifteen days and that she did not file an Application for Dispute Resolution to dispute the Notice until March 07, 2019. The Tenants applied for more time to file an application to dispute the notice on the basis they did not understand it had to be disputed within fifteen days of receiving the Notice.

The Landlord and the Tenant agree that on February 25, 2019 the Landlord personally served the Tenants with a One Month Notice to End Tenancy for Cause; that the One Month Notice to End Tenancy declared that the rental unit must be vacated by March 31, 2019; and that the Notice declared that the tenancy was ending because the rental unit must be vacated to comply with a government order.

The Landlord stated that he served the One Month Notice to End Tenancy because the City told him that he had too many tenants living in the residential complex. He stated that he has never received anything in writing that requires him to reduce the number of tenants living in the rental unit.

### Analysis

Sections 49(3), 49(4), and 49(5) of *the Residential Tenancy Act (Act)* read:

- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.
- (4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
- (5) A landlord may end a tenancy in respect of a rental unit if
  - (a) the landlord enters into an agreement in good faith to sell the rental unit,
  - (b) all the conditions on which the sale depends have been satisfied, and
  - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
    - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
    - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
- (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
  - (a) demolish the rental unit;
  - (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
  - (c) convert the residential property to strata lots under the *Strata Property*;
  - (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
  - (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
  - (f) convert the rental unit to a non-residential use.

On the basis of the undisputed evidence I find that on December 12, 2018 the Landlord

personally served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property, which required them to vacate the rental unit by February 28, 2019. It is apparent from information the Landlord attached to the Two Month Notice to End Tenancy and the testimony of the Landlord that the reason the Two Month Notice to End Tenancy was being served was that the Landlord understood that city bylaws prohibit him from having more than two tenants in the residential complex. There is nothing in section 49 of the *Act* that authorizes the Landlord to end the tenancy because city bylaws prohibit him from having more than one tenant.

Section 49(8)(a) of the *Act* stipulates that a tenant may dispute a notice given under subsection (3), (4), or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice. As this Two Month Notice was not served to the Tenants pursuant to these three subsections, I find that the 15 day deadline for disputing the Two Month Notice to End Tenancy does not apply.

Section 49(8)(b) of the *Act* stipulates that a tenant may dispute a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice. As this Two Month Notice was not served to the Tenants pursuant to subsection (6), I find that the 30 day deadline for disputing the Two Month Notice to End Tenancy does not apply.

Section 49 of the *Act* does not provide a deadline for disputing a notice if it is served for a reason not outlined in section 49. I therefore find that the Tenants had the right to dispute this Two Month Notice to End Tenancy at any time. As the Tenants had the right to dispute the Two Month Notice to End Tenancy at any time, I find that it is not necessary for me to grant them more time to file an application to dispute this Notice.

I find that the Landlord is attempting to end this tenancy for a reason not specified by section 49 of the *Act*. I therefore find that he does not have the right to end this tenancy pursuant to section 49 of the *Act* and that he did not have the right to serve this Two Month Notice to End Tenancy for Landlord's Use. I therefore grant the Tenants' application to set aside this Two Month Notice to End Tenancy for Landlord's Use, dated December 12, 2018.

Section 47(1)(k) of the *Act* authorizes a landlord to end a tenancy if the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority. On the basis of the undisputed evidence I find that on February 25, 2019 the Landlord served the Tenants with a One Month Notice to End Tenancy, pursuant to section 47(1)(k) of the *Act*.

Section 47(4) of the *Act* stipulates that a tenant must dispute a One Month to End Tenancy within ten days of receiving the Notice. As the Tenants disputed this Notice on March 07, 2019, I find that they disputed it within the legislated deadline.

When a landlord serves a Notice to End Tenancy the landlord bears the burden of proving there are grounds to end the tenancy. I find that the Landlord has submitted insufficient evidence to establish that he has grounds to end the tenancy pursuant to section 47(1)(k) of the *Act*. Although I accept the Landlord's testimony that he was told he must comply with local bylaws, I also accept his testimony that he has not been served with written notice that he must reduce the number of tenants living in the residential complex. Until such time as he receives such written notice, I cannot conclude that the rental unit must be vacated to comply with a federal, British Columbia, regional or municipal government order.

As the Landlord has failed to establish that he has grounds to end this tenancy in accordance with section 47(1)(k) of the *Act*, I grant the Tenants' application to set aside this One Month Notice to End Tenancy for Cause, dated February 25, 2019.

### Conclusion

The Two Month Notice to End Tenancy, dated December 12, 2018, is set aside. The One Month Notice to End Tenancy, dated February 25, 2019, is set aside. This tenancy will continue until it is ended in accordance with the *Act*.

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: April 09, 2019

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Residential Tenancy Branch