



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, OLC, CNL, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- disputation of a rent increase from the landlord, pursuant to section 42; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, the tenant's wife and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he personally served the landlord with his application for dispute resolution on May 28, 2019. The landlord testified that he received the tenant's application for dispute resolution in person on May 29, 2019. In either event, I find that the tenant's application for dispute resolution was served on the landlord in accordance with section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Preliminary Issue- Late Evidence

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the “*Rules*”) state that evidence should be served on the respondent at least 14 days before the hearing. Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving their evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the landlord testified that he had time to review and respond to the evidence contained in the tenant’s evidence package. I find that the landlord was informed of the case against him and was able to review and respond to the evidence provided by the tenant. I accept the tenant’s evidence package into evidence and find that the landlord was served with the tenant’s evidence package in accordance with section 88 of the *Act*.

### Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
3. Is the tenant entitled to cancel a rent increase from the landlord, pursuant to section 42 of the *Act*?
4. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
5. If the tenant’s application is dismissed and the landlord’s Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed that his tenancy began in February of 2017 and is currently ongoing. The landlord testified that monthly rent in the amount of \$1,050.00 is payable on the first day of each month. The tenant testified that monthly rent in the amount of \$1,050.00 was due any time between the first and the fifth of the month. Both parties agreed that a security deposit of \$480.00 was paid by the tenant to the landlord. Both parties agree that this is an oral tenancy agreement. Both parties agree that the subject rental building is a house with two basement suites. The tenant and his wife reside in one basement suite. Other tenants reside in the second basement suite and the landlord and his family live in the upper part of the house.

Both parties agree to the following facts. In January of 2019 the tenant's rent increased from \$1,000.00 to \$1,050.00 per month. The landlord did not provide the tenant with Residential Tenancy Branch form #7- Notice of rent increase, but verbally asked the tenant to pay more rent. The tenant paid \$1,050.00 per month in rent for the following months: January, February, April, and June.

The tenant testified that the landlord asked him to pay an extra \$100.00 in May of 2019 because he had a guest reside at the subject rental property. The tenant testified that he paid the landlord \$1,150.00 in rent for May 2019.

The landlord testified to the following facts. He did not ask the tenant to pay \$1,150.00 for the month of May 2019 and that in the beginning of May 2019 the tenant's wife provided him with a rent cheque in the amount of \$1,150.00. The landlord informed the tenant's wife that the amount on the cheque was incorrect and asked her to provide him with a new cheque in the amount of \$1,050.00. The tenant's wife returned later that month with another cheque in the amount of \$1,150.00 and told the landlord that she did not know why her husband had increased the amount. The landlord accepted and cashed the cheque because he needed the rent money for his own expenses.

The tenant's wife testified that she attempted to give the landlord the May 2019 rent cheque in the amount of \$1,150.00 on two occasions and that on the first occasion the landlord would not accept it because he wanted \$200.00 - \$300.00 more for May 2019's rent because a family member of the tenant was visiting. The tenant's wife testified that the tenant did not agree to increase rent by more than \$100.00 for his guest and so had

her attempt to deliver the cheque in the amount of \$1,150.00 a second time, and this time the landlord agreed to accept it.

The tenant is disputing the January 2019, \$50.00 rent increase and the \$100.00 charge for his visiting family member.

The tenant applied for an Order that the landlord comply with the *Act*, regulation or tenancy agreement. I asked the tenant what Order he was seeking. The tenant testified that he wanted the landlord to comply with the rent increase requirements of the *Act*.

The landlord testified that the tenant agreed to the January 2019 rent increase of \$50.00 per month and that he did not ask for the extra \$100.00 for May 2019. The landlord testified that the tenant is only disputing the rent increase because he posted a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of July 31, 2019 (the "Two Month Notice") on the tenant's door on May 12, 2019.

The tenant testified that he received the Two Month Notice on May 12, 2019. Only the first page of the Two Month Notice was entered into evidence. Both parties agree that the tenant was served with both pages of the Two Month Notice. Both parties agreed that the landlord's reason for ending the tenancy on the second page of the Two Month Notice was:

- 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).

I allowed the landlord 48 hours to upload the second page of the Two Month Notice into evidence which he did. The second page of the Two Month Notice stated that:

- 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).

The landlord testified that his daughter is going to move into the subject rental property because she is 22 years old and wants her own space. The landlord entered into evidence a sworn affidavit from his daughter which states that she is planning on moving into the subject rental property.

The tenant testified that he does not believe that the landlord's daughter is planning on moving into the subject rental property because it is against their religion for an unmarried daughter to move out. The landlord testified that his daughter was born and raised in Canada and that his daughter needs her own space, but he still wants her

close to home and so his basement suites works well for his family's needs. The landlord testified that he chose the subject rental property for his daughter because it is more connected to the upper portion of the house than the other basement suite.

### Analysis

Sections 42(3) of the *Act* states that a notice of a rent increase must be in the approved form.

Both parties agreed that the landlord verbally requested the tenant to increase rent by \$50.00 effective January 2019. I find that the notice of rent increase was not in the approved form, that being Residential Tenancy Branch form #7. Therefore, I find that the January 2019 rent increase is of no force or effect. Pursuant to section 62 of the *Act*, I Order the landlord to comply with sections 42 and 43 of the *Act*, which pertain to rent increases.

The testimony of the parties in regard to the May 2019 rent increase is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the tenants failed to prove, on a balance of probabilities, that the landlord demanded increased rent while the tenants had a guest in May of 2019.

Section 49(3) of the *Act* states that 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.

Based on the Two Month Notice entered into evidence by landlord and the testimony of both parties, I find that the Two Month Notice was served to the tenant on May 12, 2019, in accordance with section 88 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit.

Policy Guideline 2 explains the 'good faith' requirement as requiring honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

I find that there is sufficient evidence that the landlord honestly intends to use the rental unit for his daughter. In making this finding, I have taken into consideration all of the testimony of each party and all of the documentary evidence provided for this hearing.

I find the landlord's testimony as to the reasons he would like his adult daughter to move into the basement suite to be reasonable and the sworn affidavit of the landlord's daughter to be persuasive.

Based on the foregoing, I find that the tenant is not entitled to a cancellation of the Two Month Notice. Therefore, I dismiss the tenant's application.

When a tenant's application to dispute a landlord's notice to end tenancy is dismissed, section 55 of the *Act* requires me to grant an Order of Possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

After reviewing the Two Month Notice submitted into evidence by the landlord, I find that the Two Month Notice complies with section 52 of the *Act*. As a result, I find that the landlord is entitled to an Order of Possession. The Order of Possession will take effect on July 31, 2019, the effective date on the Two Month Notice.

As the tenant was partially successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### Conclusion

I Order the landlord to comply with sections 42 and 43 of the *Act*.

I issue a Monetary Order to the tenant in the amount of \$100.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on July 31, 2019**, which should be served on the tenant. Should

the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 08, 2019

---

Residential Tenancy Branch