



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the landlord: OPL, MNDCL, MT  
For the tenant: CNQ-MT, OLC

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for:

- an order of possession of the rental unit pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued to the tenant;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The tenant applied for:

- an order cancelling the Notice issued by the landlord;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- an order extending the time to file an application disputing the Notice issued by the landlord.

The landlord and the tenant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

The parties confirmed receiving the other's evidence in advance of the hearing.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, parties indicated several matters of dispute on their applications, the most urgent of which is the part of the respective applications dealing with enforcement or cancellation of the landlord's Two Month Notice.

I find that not all the claims on the applications are sufficiently related to be determined during this proceeding. I will, therefore, only consider the landlord's request to enforce the Two Month Notice and the tenant's request to cancel the Two Month Notice and for more time to file an application seeking cancellation of the Two Month Notice. The landlord's monetary claim is dismissed, with leave to reapply. The balance of the tenant's application is dismissed and whether it is with or without leave will be addressed at the end of this Decision.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit based upon his Notice and to recover the filing fee?

Is the tenant entitled to order extending the time to file an application disputing the Notice issued by the landlord?

If so, is the tenant entitled to an order cancelling the landlord's Notice?

#### Background and Evidence

The parties agreed that this tenancy began on November 1, 2018, for a monthly rent of \$1,050.00.

The tenancy began with another landlord not party to this dispute, and the evidence shows that the landlord here purchased the residential property containing the rental unit.

*Landlord's application-*

The landlord submitted that he purchased the residential property and took possession on December 4, 2019.

The landlord said that he served the tenant the signed and dated Notice on December 18, 2019, which listed a move-out date of February 29, 2020.

The Notice listed as reason for ending the tenancy was that the landlord or a close family member intended to occupy the rental unit.

The tenant confirmed receiving the Notice on December 24, 2019 and not having yet vacated the rental unit.

The landlord submitted that he has gone over to the residential property and worked on the yard, and intends to occupy the rental unit when the tenant vacates.

The landlord also submitted that he purchased the rental unit as his retirement home, and that he understands there will be a lot of renovations to be done; however, he bought the home with the intention of making at least 80% of the renovations himself.

The landlord's relevant evidence included a copy of the Notice.

*Tenant's application –*

As to the tenant's request seeking an order extending the time to file an application disputing the Notice, the tenant said that he contacted the landlord at the end of February 2020 to inform the landlord he did not have enough funds to move. The tenant said he asked the landlord for more time.

The tenant said had he known about the evidence at the time of receiving the Notice on December 24, 2019, he would have made an application to dispute the Notice sooner.

The tenant submitted that the landlord's intentions as to the rental unit are disingenuous in nature and disagrees that the landlord intends on occupying the rental unit.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### *Landlord's application –*

The Notice served on the tenant provided information to the tenant, which explained that the tenant had the right to dispute the Notice within 15 days of receiving it by filing an application for dispute resolution at the Residential Tenancy Branch (RTB) or Service BC in dispute of the Notice. It also explains that if the tenant did not file an application to dispute the Notice within the required timeframe, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. In this case, the effective date of the Notice was February 29, 2020.

In this case, the tenant confirmed he received the Notice on December 24, 2019, and was therefore required to file his application within 15 days, or January 8, 2020; instead, the tenant initially made his application to dispute the Notice on March 4, 2020.

Due to the above, I find the tenant failed to submit his application within 15 days and is conclusively presumed under section 49(9) of the Act to have accepted the end of the tenancy.

In considering the tenant's request in his application for extending the time limit, section 66(1) of the Act states that an arbitrator must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

I therefore dismiss the portion of the tenant's application for an extension of time to apply to cancel the Notice.

I have reviewed the Notice and find it was completed in accordance with section 49 of the Act. I also find the Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

As such, I find the landlord is entitled to an order of possession for the rental unit.

As the effective date of the Notice has already passed, I find the landlord is entitled to and I grant an order of possession effective two days after service upon the tenant

pursuant to section 55 of the Act, as the evidence showed the tenant did not pay monthly rent for May 2020.

If the tenant fails to vacate the rental unit pursuant to the terms of the order after being served with it, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement such as bailiff fees are recoverable from the tenant.

**Although I have ordered the tenancy will end pursuant to section 46 and 55 of the Act, I find the order of possession cannot be enforced until such time as the ORDER OF THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL, Emergency Program Act, Ministerial Order No. M089, (Ministerial Order) expires or is cancelled.**

As the landlord's application is granted, I grant him recovery of the filing fee of \$100.00. I provide the landlord with a monetary order in that amount. In the alternative, I authorize the landlord to deduct this amount from the tenant's security deposit.

#### *Tenant's application -*

As I have granted the landlord's application for an order of possession of the rental unit for the above reasons, I dismiss the tenant's application seeking cancellation of the Notice.

As I have granted the landlord an order of possession of the rental unit, signifying the end of the tenancy, I dismiss the portion of the tenant's application seeking an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, without leave to reapply.

#### Conclusion

The landlord's application for an order of possession of the rental unit based upon his Notice was granted.

The landlord was granted a monetary order for recovery of the filing fee of \$100.00.

The tenant's application was dismissed.

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: May 11, 2020

---

Residential Tenancy Branch