



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0834132 B.C. LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, OLC

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on April 6, 2022, for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice) issued by the landlord and an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The tenant and their advocate attended the hearing; however, the landlord did not attend.

The tenant testified they served the landlord with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on April 14, 2022 to the landlord's address. The tenant said the registered mail envelope was not returned to them.

Based upon the submission of the tenant, I find the landlord was served notice of this hearing and the tenant's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice and to recovery of the filing fee paid for this application?

Background and Evidence

Although a written tenancy agreement was not provided, the tenant submitted that the tenancy began in December 2017, with a different landlord. The tenant submitted that the ownership of the 42 unit apartment building changed since the tenancy started.

The tenant submitted that the landlord served them with the Notice, dated March 28, 2022, on that same date, by attaching it to the tenant's door. Filed in evidence was a copy of the Notice. The Notice was signed by an individual who the tenant submitted was the owner of the named company. The effective move-out date listed on the Notice was May 31, 2022.

The Notice listed that the rental unit will be occupied by the landlord or the landlord's spouse.

On their application, the tenant submitted the following:

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Please describe the reason(s) you are disputing this Two Month Notice to End Tenancy:  
I AM DISPUTING THIS NOTICE, AS I FEEL THE LANDLORD IS NOT ACTING IN GOOD FAITH BECAUSE THERE HAVE BEN MANY OTHER AVAILABLE UNITS IN MY BUILDING AND I FEEL SHE IS ONLY DOING THIS SO THAT SHE CAN GET ME OUT BECAUSE MY RENT IS 649.00 A MONTH AND SHE NOW RENTS OUT THE OTHER UNITS FOR 1200.00 A MONTH. THIS IS THE 4TH DISPUTE AGAINST THE LANDLORD, THE FIRST WAS FOR CAUSE AND SHE RETRACTED THE NOTICE AND CHANGED IT TO A TWO MONTH NOTICE AND THIS IS THE THIRD DISPUTE FOR THE TWO MONTH NOTICE. AS SOON AS SHE GETS THE ARBITRATORS DECISION THAT THE TENANCY WILL CONTINUE, SHE GIVES ME ANOTHER NOTICE THE SAME DAY. THIS IS BECOMING HARASSMENT AND I EVEN FEAR LEAVING MY UNIT AS I AM CONCERNED BY WHAT SHE MAY DO WHEN I AM NOT HOME. I HAVE LIVED IN THIS UNIT SINCE DECEMBER OF 2017 AND HAD NO ISSUES WITH TENANTS OR PREVIOUS LANDLORDS.

[Reproduced as written]

The tenant also said that they had heard the landlord moved into another rental unit in the apartment building.

### Analysis

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules states the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reason given on the Notice.

In this case, the Notice was issued pursuant to section 49(3) and I accept the tenant's undisputed evidence that they received the Notice on March 28, 2022. As the tenant's application was filed on April 6, 2022, I find that they disputed the Notice within the timeframe required under the Act.

In the absence of, or any evidence from, the landlord to support the reason listed on the notice to end tenancy, I find that it must be set aside, due to insufficient evidence.

I therefore **ORDER** that the Notice dated March 28, 2022, for an effective date of May 31, 2022, is cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

As to the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, I **dismiss** that part of the tenant's application, with leave to reapply, as I found the primary issue to be dealt with in this application was the tenant's request to cancel the Notice. This is allowed under Rule 2.3.

### **Cautions to the landlord –**

After considering the tenant's submission, I find it necessary to issue cautions to the landlord.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment can occur with frequent and ongoing interference by the landlord. The repeated issuances of Notices to the tenant that have not been successful could be construed as such a breach of the tenant's rights, for which the tenant could seek compensation.

I therefore inform the landlord that further attempts to end the tenancy for unlawful reasons or in bad faith may constitute harassment which could form a claim by the tenant for compensation for loss of quiet enjoyment and devaluation of the tenancy.

Further, this Decision may form a part of the record for consideration by another arbitrator in future dispute resolution matters, should this occur.

A tenant is entitled to enjoy their home, free from the worry of further, unfounded eviction notices.

### Conclusion

The tenant's application seeking cancellation of the landlord's Notice of March 28, 2022 is successful as I have ordered the Notice dated March 28, 2022 is cancelled.

The tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement regarding the laundry usage is dismissed, with leave to reapply.

The landlord has been issued a caution.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 30, 2022

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Residential Tenancy Branch