



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, ERP, FF, LRE, OLC, RP

### Introduction

This hearing dealt with an application by the tenant seeking an order to have a Two Month Notice to End Tenancy for Landlords Use of Property set aside, an order to have the landlord comply with the Act, the regulation or tenancy agreement, an order to make emergency repairs for health and safety reasons, an order to make repairs to the unit, site or property, an order to suspend or set conditions on the landlords right to enter the rental unit and an order to recover the filing fee. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Are the tenants entitled to any of the above under the Act, the regulation or the tenancy agreement?

### Background and Evidence

The tenancy began on or about May 1, 2012 on a month to month basis. Rent in the amount of \$4000.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$2000.00.

A copy of the 2 Month Notice to End Tenancy for Landlords use of Property was not submitted for this hearing but both parties agreed that the notice was deemed served on May 24, 2013. The notice stated the effective date of July 24, 2013 but after the parties

were advised of the “correcting of dates” section of the Act both parties agreed that the notice would have an effective date of July 31, 2013. Both parties also agreed that the notice was given on the basis that; *“The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) of the landlord or the landlord’s spouse.”*

The landlords were represented by counsel and the landlords required a Mandarin Interpreter to assist who was present and duly translated the proceedings.

The landlords’ daughter gave the following testimony:

The landlords’ daughter stated that she is intending to move into the subject home as she wants to have more private space for herself and to be more independent. The daughter stated that it wasn’t an ideal living situation for her to live with her parents, her 17 year old brother and 87 year old grandfather any longer. The daughter stated that she wished to have a boyfriend stay overnight and to have friends visit on a regular basis and it wasn’t convenient to do so in the present living arrangement. The daughter stated that the subject property is still within close proximity to her family that she would still be able to drive her younger brother to appointments and help out her aging parents and grandfather with their health issues. The daughter stated that since the family already owns this property it made sense for her to move in.

The female landlord gave the following testimony:

The landlord stated that its time for her 26 year old daughter to be on her own. She stated that if she was in their home country of China she would have been expected to be married and have children at this point in her life. The female landlord stated that it would be very beneficial to her daughter and the family to have her out on her own yet still close enough to assist in caring for the family’s needs.

The male landlord was made available for cross examination however the tenant’s chose not to ask any questions of this witness.

The tenants gave the following testimony:

Both tenants stated that the notice was not given in good faith and that the notice should be set aside. The male tenant provided an outline of the history of this tenancy and the issues and problems that the parties have had. The female tenant stated on numerous occasions that the landlords were trying to evict them due to their victories in other dispute resolution hearings and small claims actions. Both tenants stated on several occasions that why would a “young girl want to move into such a big house that requires emergency repairs”. The tenants stated that the landlords have been making attempts to end the tenancy as there are outstanding repair orders, an unpaid monetary order and are “clearly seeking to avoid any of this responsibility”. The tenants stated that the landlords are acting in bad faith and their ulterior motive is retribution for the tenants holding them in accordance with the Act.

### Analysis

Both parties’ testimonies and evidence have been considered in making a decision. As this matter was conducted over 90 minutes of hearing time, all issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not repeat each and every item, instead it will focus directly on the claims as made in the application before me.

Both tenants gave testimony during the hearing. I find that the evidence they provided and their demeanour while giving their testimony, lacked credibility and was often exaggerated. The tenants repeatedly made statements during the hearing that “they want us out because we make them follow the Act”. However, when the landlords counsel questioned the tenants on specific points about the Act, the tenancy agreement, and previous hearings where they were the only participants; the tenants became argumentative and evasive, in particular the female tenant. When the landlords counsel asked to review some of the tenants own documentation and to challenge the male tenant on the facts as he submitted them, the male tenant stated “I can’t be expected to remember anything with any degree of certainty, a lot has happened”. The

male tenant made that comment three times during the hearing. Counsel for the landlords submitted that the tenants were the ones that were in fact acting in “bad faith” and were not being truthful when they submitted an unsigned tenancy agreement that was listed as a two year lease. Counsel further submitted that it was in fact a month to month tenancy and that the integrity of the witness and his evidence was an issue. The male tenant stated that he submitted that unsigned copy to provide a basis of what the verbal agreement between him and the owners was.

As the tenants were self represented I attempted to assist the tenants by asking them to stay focused on the matter as applied for and to focus on their evidence and arguments; however the tenants would revert to items that were neither relevant nor helpful. The tenants questioned the validity of the person presented as the landlords daughter and if she really is the daughter of the landlords. The tenants also questioned why the landlords were entitled to provide testimony for the hearing as the tenants were not advised in advance. I explained to the tenants that they should have reasonably expected the landlords to be present and offer testimony for the following reasons; the landlords are the owners of the property and that they are the named respondents in the tenants own application. The tenants also made reference on three separate occasions that the landlords counsel was trying to “run out the clock”. The tenants presented their evidence in a disjointed and often confusing and contradictory manner.

In the case before me the landlord must provide evidence to prove the “good faith” requirement for the reasons given on the Notice to End Tenancy by first intending to use the premises for the purpose stated, in this case the daughter of the owner intends to occupy the house, and secondly the landlords must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenants vacate the premises.

The female landlord and her daughter both gave testimony during this hearing. I found both to be clear, concise and credible while giving testimony. The daughter outlined the plans for her future that included being on her own while still being in close proximity to her family. The landlord and her daughter both spoke of only the future and family arrangements and made no reference to past issues with the tenants or any malice for

them. The tenants were afforded the opportunity to challenge and question all witnesses.

Based on all of the above and on the balance of probabilities, I find that the tenant's claim of the landlord acting in bad faith must be dismissed. The Two Month Notice to End Tenancy for Landlords Use of Property remains in full effect and force. The tenancy is terminated.

The landlord made an oral request or an order of possession pursuant to Section 55 of the Act. Based on the above facts I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As I have found that this tenancy to be terminated I need not address the other issues applied for by the tenant.

The tenant's application is dismissed in its entirety without leave to reapply.

### Conclusion

The landlord is granted an order of possession.

The tenant's application is dismissed in its entirety without leave to reapply.

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 10, 2013

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Residential Tenancy Branch

