



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

At the hearing the landlord's agent made an oral request for an order of possession.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord attended briefly to confirm that his spouse would be acting as his advocate and agent in this application and excused himself from the hearing.

The landlord's agent provided evidence that the landlord posted the 2 Month Notice on the tenants' door on 11 September 2014. The tenants confirmed that they received the 2 Month Notice that is the subject of this application. On this basis, I am satisfied that the tenants were served with the 2 Month Notice in accordance with section 88 of the Act.

The tenants testified that they served the landlord with the dispute resolution package on 30 September 2014 by delivering it personally to the landlord. The landlord's agent confirmed that the landlord received the dispute resolution package. On the basis of this evidence, I am satisfied that the landlord was served with notice of this application pursuant to section 89 of the Act.

The tenants testified that they served the evidence to the landlord by posting it on the landlord's door on 17 October 2014. The landlord's agent admitted receipt of the evidence and confirmed that she had reviewed it. On the basis of this evidence, I am

satisfied that the landlord was served with the evidence pursuant to section 88 of the Act.

The landlord's agent testified that the landlord served the evidence to the tenants by posting it on the tenants' door on 21 October 2014. The tenants admitted receipt of the evidence. On the basis of this evidence, I am satisfied that the tenants were served with the evidence pursuant to section 88 of the Act.

### Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, and miscellaneous letters, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' application and my findings are set out below.

This tenancy began 1 October 2013. Monthly rent of \$780.00 was due on the first. The tenants occupy one of two basement suites on the property. The landlord and the landlord's agent occupy the upstairs of the property.

On 11 September 2014, the landlord served the tenants with the 2 Month Notice. The stated reason for the 2 Month Notice was that the rental unit would be occupied by the landlord or a close family member of the landlord. The 2 Month Notice set an effective date of 30 November 2014.

The landlord's agent provided sworn testimony that she was pregnant. I was provided with a note from the landlord's agent's attending physician that stated the landlord's agent is due 13 December 2014. The tenants do not dispute that the landlord and landlord's agent are expecting a child.

The landlord's agent testified that she and the landlord require the rental unit as the landlord's parents are arriving 6 December 2014 and will be staying in the suite. The landlord's parents will be assisting the landlord and landlord's agent with the baby. The tenants do not dispute that the landlord's parents will be arriving 6 December 2014.

The landlord's agent testified that the upstairs unit is too small to accommodate her visiting in-laws. The landlord's agent testified that the upstairs unit has two bedrooms and a den. The landlord's agent testified that the second bedroom will be converted to a nursery and that the den is required for the landlord's agent's work on her doctoral

thesis. The landlord's agent testified that it is preferable for the families to occupy different areas of the home to avoid conflict in sleeping preferences: the landlord's agent testified that she and her spouse are up later than her elderly in-laws. The landlord's agent also testified that her father and mother in law require separate rooms as the father in law snores and the mother in law is a light sleeper. The landlord's agent further testified that there is an adjoining door from the upper unit to the rental unit, and not an adjoining door between the second basement unit and the upstairs unit. She testified that during the cold and rainy winter months it would be more convenient for the families to visit with use of the adjoining door.

The landlord's agent testified that her in-laws visited earlier this year and were originally scheduled to depart in September left in July. This visit was originally for the purpose of assisting with the birth of another child; however, this pregnancy terminated in miscarriage. As there was no need for the in-laws to remain, they returned to China. When the landlord's parents stayed in the upstairs unit, the father had to sleep in the living room and the mother in the second bedroom. The landlord's agent testified that this was very inconvenient.

The landlord's agent provided copies of the in-laws' plane tickets. These tickets indicate an arrival date of 6 December 2014 and a departure date of 3 April 2015. The landlord's agent testified that it is her intention that her in-laws will stay longer if necessary to assist her and that it is their intention to apply for permanent resident status and stay in the basement suite. The landlord's agent testified that her in-laws currently have a ten-year, multiple-entry visa that only allows them to stay for up to six months at one time. The landlord's agent testified that the in-laws have not yet applied for permanent resident status as there is no room in this year's quota. The landlord's agent testified that, at some future point, after the in-laws move from the rental unit it is their intention to rent the unit.

The tenants testified that they believe that this 2 Month Notice is retaliatory behavior in relation to the tenants' application to order the landlord to make repairs and that the landlord does not want to complete the repairs. The tenants testified that the landlord failed in an attempt to end the tenancy based on a 1 Month Notice to End Tenancy for Cause and that this was an attempt by the landlord to exploit a loophole. The landlord's agent asserted that the prior claims are irrelevant to this claim.

The tenants testified that the landlord could have chosen to evict the tenant of the second basement unit.

The landlord's agent testified that the tenants have provided the landlord with a cheque for November's rent, but that the landlord has not deposited this cheque.

## Analysis

Subsection 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, the landlord's agent has provided me with ample testimony and evidence that shows that the landlord's parents will be occupying the rental unit for an indeterminate period of not less than four months. I find that the landlord intends to have his parent's live in the rental unit to assist with the birth and care of the landlord's child due 13 December 2014.

*Residential Tenancy Policy Guideline "2. Good Faith Requirement When Ending a Tenancy"* sets out:

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrates that they do not have an ulterior motive for ending the tenancy.

The tenants have asserted that this 2 Month Notice was issued with the motive of avoiding repairs or as retaliation for the tenants' pursuing remedies with the Residential Tenancy Branch. I accept the landlord's agent's testimony that the landlord does not have ulterior motives and that they truly intend to do what they stated in the 2 Month Notice. The landlord's parents have arranged to help with the landlord's pregnancy in the past. The tenants suggest that it would be a reasonable alternative to end the tenancy of the second downstairs unit. I accept the landlord's testimony that it is preferable to have the in-laws occupy the two-bedroom basement suite with the adjoining door. I find that there was no ulterior basis for issuing the 2 Month Notice.

The tenants raised paragraph section 51(2)(b) of the Act in their submissions. Paragraph 51(2)(b) sets out that where a rental unit is not used for the stated purpose for a period of at least six months the landlord must pay the tenant double the rent payable under the tenancy. This provision is a retrospective provision that raises a presumption that negates a previous finding of good faith pursuant to subsection 49(4). In this case the landlord's agent testified that her in-laws will be occupying the unit for an indeterminate period and one not less than four months. I find that it would be premature to use this section at this time to negate the good faith finding.

Accordingly, I dismiss the tenants' application without leave to reapply.

Subsection 51(1) of the Act requires a landlord to provide tenant with an amount equivalent to one month of rent before the effective date of the landlord's 2 Month Notice. The tenant may receive the last month of rent free. In order to comply with this provision, the landlord is ordered to return the tenants' cheque for November's rent to the tenants.

Pursuant to section 55, where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession. As the tenants' application is dismissed and the landlord has made an oral request for an order of possession, I am obligated by the Act to grant the landlord an order of possession.

### Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord is ordered to return the tenants' cheque for November's rent to the tenants in order to comply with the requirements of subsection 51(1) of the Act.

The landlord is provided with a formal copy of an order of possession effective at 1pm on 30 November 2014. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: November 14, 2014

---

Residential Tenancy Branch

