



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, ERP, PSF, RR, FF

### 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;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

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 female tenant (the tenant) confirmed that the landlord handed the tenants the 2 Month Notice on August 29, 2015, seeking an end to the tenancy by October 31, 2015. The landlord's agent confirmed that the tenants handed copies of their original dispute resolution hearing package to the landlord on September 16, 2015. The landlord's agent also confirmed the tenant's testimony that she provided copies of the tenants' amended hearing package to the landlord well in advance of this hearing. I am satisfied that these documents were all duly served to one another in accordance with sections 88 and 89 of the *Act*.

The landlord's agent confirmed that the landlord had received the initial evidence package from the tenants and reviewed the contents of that package during the hearing. Although the landlord did not appear to have sent a copy of 8 pages of text message

evidence to his agent, he said that he did receive this material from the tenants. The landlord testified through his translator that he had received the original text messages from the tenants, but had not forwarded the English versions of these messages to his agent. As the landlord received the contents of the text messages from the tenants and their contents did not appear to have an impact on the issues before me, I advised the parties that there was no reason to disregard the text message evidence from my consideration. The landlord's agent said that he could ask for sworn testimony regarding any of the contents of those messages if they proved relevant.

At the outset of the hearing, the landlord's agent made an oral request for the issuance of an Order of Possession in the event that the tenants' application to cancel the 2 Month Notice were dismissed.

At the beginning of the hearing, we encountered some difficulty connecting with the landlord. The landlord's agent said that the landlord needed help from a translator who was located to help him connect with this teleconference hearing and to facilitate translation of the proceedings.

#### Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to a monetary award for losses in the value of their tenancy during the course of this tenancy or any other damages? Are the tenants entitled to a reduction in their past or future rent? Should any other orders be issues with respect to this tenancy?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, including copies of miscellaneous text messages, documents, notices, 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' claim and my findings around each are set out below.

The tenant gave undisputed sworn testimony that this tenancy began on or about November 1, 2007, on the basis of an oral month-to-month tenancy. The landlord confirmed that no written Residential Tenancy Agreement was created. Monthly rent was initially set at \$550.00, which has increased over time to \$680.00. The landlord confirmed that he has not submitted any Notices of Rent Increase to the tenants on the Residential Tenancy Branch (RTB) prescribed forms required under the *Act*. The landlord continues to hold the tenants' \$200.00 security deposit paid when this tenancy started.

The tenants applied to cancel the 2 Month Notice entered into written evidence by the tenants and issued for the following stated reason:

- *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 tenants also maintained that the landlord had raised their monthly rent repeatedly during this tenancy without authorization. They submitted written evidence alleging that monthly rent increases in May 2015 from \$600.00 to \$625.00, and in June, 2015 from \$625.00 to \$680.00, occurred during the past year. The landlord's sworn testimony on these dates and amounts changed a number of times during the course of this hearing, although he did not deny the tenants' claim that he had not used any RTB forms to increase the tenants' monthly rent. The tenants also maintained that the landlord had withdrawn cable service that they had been receiving during this tenancy, and claimed that there were other services which they were not reliably receiving during this tenancy. They provided no breakdown of how they arrived at the \$5,000.00 amount identified in their application for a monetary award.

The landlord's agent noted that his involvement in representing the landlord was initially limited to the issues surrounding the 2 Month Notice. At the hearing, the landlord and his agent testified that the landlord's parents wished to move from the new home the landlord had constructed for his extended family because they were finding the new home too busy for them. The landlord's 87-year old father and his mother had formerly lived in the upstairs living area of the rental property since 1995. In August 2015, they moved approximately one block into the much larger and newer home constructed by the landlord for the entire family, including the landlord's four children. The landlord and the landlord's agent said that the landlord's parents found the new home far too busy and noisy for their liking and wanted to return to their former residence, and live in the lower level rental unit currently occupied by the tenants.

The tenant did not dispute this testimony, but said that the tenants needed until at least the end of March 2016, because a move before then would conflict with ongoing school studies.

### Analysis

After I heard testimony from the parties and advised them of my interim finding that the landlords appeared to have a valid reason for issuing the 2 Month Notice, I asked the parties if they had any interest in discussing ways of resolving their dispute. These

discussions were undertaken pursuant to section 63 of the *Act*, which establishes that the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. They had attempted to reach a settlement earlier in this hearing, but were unsuccessful in doing so. The parties discussed these issues further, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. In this regard, the landlord's agent and the landlord's translator were very helpful in assisting the parties to reach a compromise that was acceptable to both parties.

Both parties agreed to a resolution of all issues arising from the tenants' application and in dispute at this time under the following terms of settlement:

1. Both parties agreed that this tenancy will end on the basis of the 2 Month Notice by 1:00 p.m. on January 31, 2016, by which time the tenants will have vacated the rental unit.
2. Both parties agreed that the monetary issues identified in the tenants' application are to be resolved in their entirety by the landlord's agreement to allow the tenants to remain in the rental unit until January 31, 2016, without paying any further rent. To be clear, and as discussed at the hearing, this provision of an additional month's free rent beyond what would legally be required under the provisions of the *Act* are in addition to any further compensation that could be due if the landlord does not use the rental unit for the purposes stated in his 2 Month Notice.
3. Both parties agreed that this settlement constituted a final and binding resolution of all monetary issues identified in the tenants' application for dispute resolution and currently under dispute in this tenancy.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenants do not vacate the rental premises by 1:00 p.m. on January 31, 2016, in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. 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.

To give effect to the settlement agreement outlined above, I order that the tenants are not required to pay any monthly rent for December 2015 and January 2016, the final two months of their tenancy.

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: November 16, 2015

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Residential Tenancy Branch

