



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNL, MNDC, MNSD, FF

### Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenants applied to cancel a two month Notice to end tenancy for landlords' use of the property, compensation in the sum of \$12,279.00, return of the security deposit and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matters

Section 2.3 of the Residential Tenancy Branch Rules of procedure provides:

#### **2.3 Related issues**

*Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.*

As the tenants included matters in the application that were not sufficiently related to the issue of the tenancy ending I applied section 2.3 of the Rules and dismissed the unrelated monetary claim with leave to reapply. The tenants stated that the most important issue at this hearing was whether the tenancy would end based on the Notice ending tenancy in dispute.

### Issue(s) to be Decided

Should the two month Notice ending tenancy for landlords' use of the property issued on December 7, 2015 be cancelled or must the landlord be issued an Order of possession?

### Background and Evidence

The tenancy commenced on October 20, 2012. Rent is due on the first day of each month.

The tenants confirmed receipt of a two month Notice to end tenancy for landlord's use of the property, on January 22, 2016. The Notice was issued on January 22, 2016 and

has an effective date of April 1, 2016. The tenants applied to dispute the Notice on February 5, 2016.

The Notice provided one 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 stated that they disputed the Notice as they believe the landlord has an ulterior motive for issuing the Notice. The tenants did not dispute that the landlords' 23 year old son planned to move into the rental unit; only that the decision had been made based on the landlords' dislike of the tenants.

The landlord explained that the rental unit is on acreage. The tenants rent a suite in the upper level of a home. There is another tenant in the lower unit. There are several other structures on the property; one of which houses a gardener.

The landlord said that her son has recently begun a landscaping business and wishes to use the property for his business. The son will also assist the part-time gardener. The landlords' son stated that he has wanted to move onto the farm since he was in high school and that he is now ready. Living on the property will allow him to keep animals and grow food. The son has two friends who will move in to assist him paying the rent. The son said he could not afford to live in another structure on the property as they do not have multiple bedrooms. With the extra bedrooms his friends can help him keep costs down.

The tenants said that it is not whether they believe the son will move into the rental unit but whether the landlord has another purpose or motive for the eviction. The tenants provided email evidence sent between the parties from October 8, 2013 to January 4, 2015. During that time a number of issues were raised by the landlord.

The tenants disputed the landlords' decision to raise their rent by the sum included in the tenancy agreement for any additional occupants; the tenants had a baby. The tenants found this unreasonable. The landlord responded explaining that she was not a charity and that she did not normally raise rents, as allowed each year.

Some emails referenced normal discussions regarding renewal of the tenancy and rent payments. In early 2014 the landlord wanted the tenants to pay the newly instituted garbage fees imposed by the municipality. The tenancy agreement did not include the cost of garbage removal. The tenants thought the landlord was being unreasonable in her attempt to make the tenants pay this new cost. The tenants emailed the landlord to dispute the expectation that they pay this cost. The landlord replied that the tenants were required to pay for removal of their personal garbage. The carts that had been present were paid for by the landlord, but the tenants were to pay for their own garbage removal. The landlord had been paying for removal for the other homes on the property.

The tenants pointed to a dispute regarding use of a chicken house. The gardener had given the tenants his chickens. The landlord wanted the tenants to pay for rental of the coop. Any agreement that had been reached about caring for the chickens ended in September 2014.

In an August 24, 2014 email the landlord explained that her emails might sound rough or harsh, as English is her second language.

The tenants said that they agreed to look after the trees, chickens and garden while the landlord was away during the summer months. The tenants did this for several summers but ceased in 2015. They did this work as a favour to the landlord. The tenants suspect their decision to cease this service contributed to the landlord issuing the Notice to end tenancy.

The tenants erected a shed in 2014. The landlord did not provide written approval, as set out in the tenancy agreement but since 2014 there had not been any problems raised over the shed.

There was some dispute over the tenants having control over the heat pump. The tenant in the lower unit was cold. The tenants had the right to control the heat pump removed so the person in the lower unit to set the heat to a reasonable level.

In September 2014 the tenants sent the landlord an email setting out dissatisfaction with the extra rent for the baby, garbage collection fees and loss of use of space in the woods behind the house. The landlord replied that the tenant was giving her a lecture that the landlord only partially understood. The landlord did not wish to discuss the matters further.

On December 24, 2014 the landlord emailed the tenants to explain that the tenants needed to "stick to the tenancy agreement." The landlord pointed out construction of a wall in the garage, plastic containers around the boat shed and a shed built without permission. The landlord explained that she did not like it and that the tenants should remove any construction on the property.

The tenants replied that they thought the landlord would be pleased with the shed.

In January 4, 2015 the landlord emailed that she would be happy if the tenants left the property.

There were no further emails in evidence until November 3, 2015 when the landlord sent a message reminding the tenants to pay rent on time. The landlord also reminded the tenants of the unapproved shed, converting the garage to workshop without permission, the barrels on the property and the tenants' refusal to pay for garbage removal. The landlord said the tenants were exploiting some parts of her property and the terms of the tenancy agreement.

The tenants pointed to the landlords' evidence submission where the landlord alleges the tenants have caused damage to the rental unit. The tenants did not know how the landlord had discovered a sauna in their bedroom, when she had permission to enter the home for a repair elsewhere in the unit.

The tenants said that over the past three years there were many small instances that occurred that have added up to the landlord wanting to end their tenancy.

The landlord responded that the tenants have not disputed that the landlords' son intends to reside in the rental unit. The matters raised, alleging an ulterior motive, are reasonable disputes that would arise during a tenancy.

The landlord was entitled to raise the rent when an additional occupant, the baby, was born. That increase was set out in clause six of the tenancy agreement.

The landlord had given the tenants permission to have a boat shed, but not to build another shed. Any change to the residential property was prohibited by the Use of Rental Unit clause of the tenancy agreement.

The landlord had asked about the oil drums the tenants had on the property; this was a normal enquiry. The sauna that was in the upstairs bedroom had not been approved by the landlord. There was some debate over the use of a chicken run and when the tenants requested compensation for caring for the chickens some dispute was sparked.

Any disagreements between the parties ceased after January 2015 and the majority of the complaints made by the tenants occurred over two years ago. There has not been any disagreement over the past year that would support the tenants' suggestion of an ulterior motive.

The landlord said she keeps rents low, she knows her rights and is a good landlord.

The tenants wondered why the son could not live elsewhere and still have access to the farm where he could carry out his business. The landlords' son stated that if he cannot live on the property he would be forced to complete a 20 minute, one way drive, twice daily, to care for animals on the property. The travel would not be practical.

### Analysis

From the evidence before me I find that there is no dispute that the landlords' son plans to take possession of the rental unit. The tenants did not argue that the son would not move in to the unit; the tenants believe that this decision has been made as the landlord has an ulterior motive for eviction, as the landlord does not like the tenants.

Residential Tenancy Branch Policy (RTB) provides:

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*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 demonstrate they do not have an ulterior motive for ending the tenancy.*

The tenants referenced a number of issues that have arisen during the tenancy; most of which I find occurred up to January 2015. From the evidence before me I find that between January 2015 and November 3, 2015 there were no problems raised by the landlord regarding compliance with the tenancy agreement terms.

When reviewing the emails sent by the landlord I considered the landlord's August 2014 explanation given in an email, that her emails might sound harsh, as English was not her first language. I find that this explanation provided by the landlord was fair and reasonable and that any perceived negative tone to the messages was likely due to the landlords' use of the written English language.

On November 3, 2015 the landlord did raise a concern that the tenants had not complied with some terms of the tenancy agreement. I find that the issues mentioned by the landlord in November 2015 were based on the landlords' expectation the tenants comply with the tenancy agreement and was not motivated by any dislike of the tenants. ]

A landlord possesses the right to discuss issues when they believe a tenant needs to be reminded of their obligations. Those reminders are part of enforcing the obligations of the tenants and the rights of the landlord. I do not find that mention of these issues showed that the landlord disliked the tenants; only that she wanted to remind them of their obligations. In fact the landlord has a right to inform tenants of their obligations.

I found the tenants' allegation that the landlord disliked them as motivation for the eviction was borne more out of a desire to remain in the rental unit than based on the absence of good faith on the part of the landlord.

Throughout 2015 there were no problems that were raised and in November 2015 only a reminder was issued by the landlord, setting out matters that had been previously brought to the tenants' attention. I did not find this unusual or that the email supported any ulterior motive, but was issued again, in an attempt to remind the tenants of their obligations.

Based on the evidence before me I find, on the balance of probabilities that the landlord has established that there was not an ulterior motive or any other motivation for issuing the Notice to end tenancy. I find that the landlord does intend, in good faith, to have her son move into the rental unit.

Therefore I find that the tenants' application is dismissed and that the Notice ending tenancy for landlords' use of the property issued on January 22, 2016 is of full force and effect.

Section 55 of the Act provides:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*  
*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

The landlord has been granted an Order of possession that is effective at **1:00 p.m. on April 1, 2016**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The application to cancel the Notice is dismissed.

The tenants' monetary claim is dismissed with leave to reapply.

The Notice ending tenancy issued on January 22, 2016 is of full force and effect.

The landlord is entitled to an Order of possession.

This decision is final and binding 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: March 24, 2016

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Residential Tenancy Branch

