



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, 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; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both landlords and both tenants attended the hearing. All 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 tenants served the landlords with the dispute resolution package on 4 May 2016 by registered mail. The landlord TH admitted service of the dispute resolution package; however, the landlord TH noted that this package was not received until this week. The landlords indicated that they were prepared to proceed and did not dispute service. On the basis of this evidence, I am satisfied that the landlords were served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord RS testified that he served the tenants personally with the 2 Month Notice for Landlord's Use (the 2 Month Notice). The tenants admitted service. On the basis of this evidence, I am satisfied that the tenants were served with the 2 Month pursuant to section 88 of the Act.

Issue(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an order of possession? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began in November 2012. Current monthly rent is \$1,503.00 and is due on the first. The landlord continues to hold the tenants' security deposit of \$700.00, which was collected at the beginning of the tenancy. There is a written tenancy agreement; however, I was not provided with a copy.

On 16 April 2016, the landlord RS wrote to the tenant to inform them that the landlord intended to end the tenancy in order to renovate the rental unit in the summer. The email asked the tenants to vacate by 31 July 2016.

On 18 April 2016, the tenants responded to the email asking to stay longer and offering to agree to an increased rent amount.

On 22 April 2016, the landlord RS wrote to the tenants to decline the offer and state that the landlords intended to complete renovations and have a sibling's family move into the rental unit.

On 1 May 2016, the landlords served the 2 Month Notice to the tenants. The 2 Month Notice was dated 1 May 2016 and set out an effective date of 31 July 2016. The 2 Month Notice stated that it was given as "the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)".

The landlord TH testified that currently her parents, brother, sister-in-law, three children (including a newborn), and sister-in-law's mother are living in a three bedroom home. The landlord TH testified that the purpose of obtaining possession is to move members of that residence into the rental unit to have the family have more space, which can be achieved by either moving her parents or her brother's family. The landlord TH testified that the landlords want to comply with the residential tenancy legislation and that they

intend to move TH's parents into the rental unit after completing some renovations involving painting, flooring, and bathroom fixtures. The landlord TH testified that if the landlords intended to re-rent the unit, they would have accepted the tenants' offer of increased rent.

The tenants submit that the evidence indicates the landlords intend to have the brother occupy the rental unit and that the brother does not qualify as a "close family member" within the meaning of the Act. The tenants submit that the landlords have provided insufficient evidence that the TH's parents will occupy the rental unit.

### Analysis

Pursuant to subsection 49(3) of the Act a landlord may end a tenancy by providing a 2 Month Notice where:

the landlord or a close family member of the landlord intends in good faith to occupy the rental unit...

In accordance with subsection 49(8) of the Act, the tenant must file his or her application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenants received the 2 Month Notice on 1 May 2016. The tenants filed their application for dispute resolution on 2 May 2016. Accordingly, the tenants filed within the fifteen day limit provided for under the Act.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...

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 are correct that the brother would not qualify as a close family member for the purposes of subsection 49(3) of the Act. The landlords testified that they understand this and that is their intent to use the rental unit for the purpose of providing more space to the family and that they intend to move TH's parents into the rental unit. On the basis of the evidence provided by the landlords, I find, on a balance of probabilities that they have shown that they have a good faith intention of moving TH's parents into the rental unit after completing some renovations. I found the landlords' evidence to be highly credible. In particular, their explanation for their need for the rental unit had the ring of truth and their denial of the tenants' offer of increased rent is consistent with their stated intentions. For these reasons, I find that the 2 Month Notice is valid.

Subsection 55(1) of the Act sets out that 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.

Section 52 of the Act reads:

In order to be effective, a notice to end tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The 2 Month Notice complies with the requirements set out in section 52 of the Act. In accordance with subsection 55(1) of the Act, I issue the landlords an order of possession effective 31 July 2016. The parties' rights and obligations pursuant to sections 49, 50, and 51 are unaltered.

As the tenants were unsuccessful in their application, they are not entitled to recover their filing fee from the landlords.

Conclusion

The landlords are provided with a formal copy of an order of possession effective 31 July 2016. 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: June 02, 2016

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Residential Tenancy Branch