



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, OPB, O (Landlords' Application)  
                             CNL, CNC, FF (Tenants' Application)

### Introduction

These hearings were convened by way of conference call concerning an Application for Dispute Resolution (the "Application") made by both the Tenants and the Landlords.

The Tenants applied on July 4, 2016 to dispute a notice to end tenancy for the Landlords' use of the property and to recover the filing fee from the Landlords. The Tenants amended their Application on August 2, 2016 to include a request to cancel a notice to end tenancy for cause. The Landlords applied for an Order of Possession to end the tenancy for their use of the property and because the Tenants had breached an agreement. The Landlords also applied for "Other" issues.

### Preliminary Issues

The parties appeared for the hearings and provided affirmed testimony. At the original hearing, the parties confirmed receipt of each other's Application and documentary evidence. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, refer me to their documentary evidence to support their case, and cross examine the other party on the issues to be decided. While I have carefully considered all the evidence provided by the parties in this case, I have only documented that evidence which I relied upon to make findings in this Decision.

At the start of the original hearing, the male Landlord confirmed that the only matter they wanted to be decided upon in this hearing was their request for an Order of Possession based on the 2 Month Notice to End Tenancy for the Landlords' Use of the Property (the "Notice"). The male Landlord explained that while they were in possession of evidence to prove the notice to end tenancy for cause, they had not provided this prior to this hearing and therefore did not wish to pursue that notice to end tenancy.

The Landlords confirmed their withdrawal of the notice to end tenancy for cause dated July 19, 2016. The Tenants consented to the withdrawal of the notice to end tenancy for cause. The Landlord continued to explain that their Application for “Other” issues pertained to an oral request for an Order of Possession and that their Application for an Order of Possession for breach of an agreement pertained to the reasons selected on the notice to end tenancy for cause. As a result, the Landlords withdrew these two portions of their Application as these issues are now moot. The Landlords confirmed their Application for an Order of Possession to end the tenancy pursuant to the Notice as the only issue to be determined in this hearing.

The Landlords also explained that the reasons indicated on the Notice dated June 27, 2016 was because the Landlords themselves intended in good faith to occupy the rental unit. The Landlords withdrew the reason on the Notice that the property had sold and the new owner, or the new owner’s family wanted to occupy the rental unit, as this was not the case. The Tenants did not raise any concerns with respect to the foregoing issues raised by the Landlords.

The original hearing which took place on August 22, 2016 heard the Landlords’ Application. That hearing was adjourned due to the scheduled time period that had been reached. The parties were issued an Interim Decision on the same day which stated that the Landlords were still required to comply with a decision that was made by a different Arbitrator on March 21, 2016 and on June 3, 2016. These decisions required the Landlord to complete repairs to the rental unit and provided the Tenants with monetary compensation as well as an ongoing rent reduction. The reconvened hearing heard the Tenants’ Application with respect to cancelling the Notice. At the reconvened hearing, the evidence provided by the Landlords at the original hearing documented below was reviewed with the parties for: its accuracy; to clear any discrepancies that had been recorded; and to add any other evidence the Landlords were reliant on.

#### Issue(s) to be Decided

- Have the Landlords provided sufficient evidence to show the Notice was served to the Tenants in good faith?
- Should the Notice be cancelled?

#### Background and Evidence

The parties agreed that this tenancy started on or around February 15, 2015 for a fixed term of six months after which it continued on a month-to-month basis thereafter. A written tenancy agreement was signed by the parties which require the Tenants to pay

rent in the amount of \$1,050.00 on the first day of each month. However, pursuant to previous decisions made by different arbitrators (the file number for which appears on the front page of this Decision), the rent has been reduced to \$800.00 per month. The Tenants paid the Landlords a security deposit of \$525.00 and a pet damage deposit of \$475.00, both of which the Landlords continue to hold in trust.

The Landlords confirmed that following a hearing that took place on June 2, 2016, that Arbitrator provided the Landlords liberty to re-serve another Notice to the Tenants. As a result, the Landlords served the Tenants with the Notice on June 27, 2016. The Notice was provided into evidence and states a vacancy date of August 31, 2016. The male Landlord confirmed during the hearing that the reason for ending the tenancy on the Notice was because the rental unit will be occupied by the Landlords. The Tenants confirmed receipt of the Notice on June 27, 2016 and applied to dispute the Notice by making their Application and paying the filing fee on July 4, 2016.

The male Landlord testified that the last hearing which canceled the previous Landlord's Notice dated April 26, 2016 was cancelled because the good faith requirement was in doubt based on an advertisement the Landlords' daughter had placed to sell the rental unit. The Landlord vehemently denied that they had an intention to sell the rental unit and that the previous advertisement had lapsed and since then five months had lapsed without any advertisement being placed to sell the rental unit. The Landlord testified that they wanted to occupy the rental unit because they were seniors and that the rental unit is intended to be a place for their retirement.

The Landlord testified that they were currently residing in a 200 square foot trailer, of which only 175 square feet was livable by the Landlords and their autistic brother-in-law. The Landlord explained that this space was too small for the three of them. The Landlord testified that they had experimented living in the trailer for a period of approximately two years and that the experiment was over and the Landlords intend to move into the rental unit.

The Landlord testified that they had rented the rental unit to the Tenants on the basis that the agreement would incorporate a rent-to-own situation but after the tenancy had been entered into, it was clear that the Tenants did not have the money to honor such an agreement. The Landlord testified that the rental unit was located on 10 acres of land, 8.5 acres of which is not part of this tenancy agreement. The Landlord explained that there is a log home located on the 8.5 acres of land and that this home is a heritage home which is infested by mold. The Landlord was asked whether he had any laboratory or expert evidence to support this oral evidence. The Landlord stated that he did not as he did not have time to submit this and did not know this was required.

The Landlord testified that his wife has a neck injury and shoulder pain which is being exacerbated by having to live in their current tiny trailer home. The Landlord was asked whether he had any medical evidence to support this oral evidence. The Landlord stated that he did not as he did not have time to submit this and did not know this was required.

The Landlord testified that they do not have the property on for sale through a realtor or through any advertisement. The Landlord stated the last time they did have it on sale was prior to the Tenants renting it which the Landlords were intending was going to continue into a rent-to-own situation, which it did not.

The Landlord then read from an email statement in which his granddaughter writes that she is looking forward to visiting the Landlords at the rental home and celebrating birthday parties with them. The Landlord explained that they are not reliant on the rent for this tenancy to support their financial situation as they have only been renting it for a short period of time and therefore, finances are not an issue in this case.

The Landlord then referred to the fact that they had not entered into a long term tenancy with the Tenants which was further evidence that they intended to occupy the rental unit. The Landlord explained that the estate was currently in the process of being transferred to her daughter who is the beneficiary to their estate and that she will have a third ownership of the property. The Landlord testified that if they pass away, her daughter will be hit by a special transfer tax imposed by BC legislation which will apply because the Landlords have not been living in their primary residence for more than six months.

The Landlord confirmed during the hearing that he had not completed the repairs that had been previously ordered by the previous Arbitrators because he did not agree with the outcome of those hearings, despite being unsuccessful in applying for reviews of those decisions. The Landlord stated that the Tenants have continued to make deductions from rent to achieve their relief for this issue.

The Landlord testified that he was no longer short financially as he did not have to go back to work because his pension and his wife's disability were providing income assistance of approximately \$600.00 per month. The Landlord concluded by stating that they wanted out of the rental business and wanted to occupy the rental unit.

At the reconvened hearing, the male Tenant provided all of the testimony. The Tenant explained that this was the Landlord's third attempt to evict them out of the rental unit using a notice to end tenancy.

The Tenant testified that the Landlords have not been issued the Notice in good faith mainly because the Landlords have failed to complete the repairs that were previously ordered in a hearing of March 21, 2016. Since that time the Landlord has not taken any steps to complete the repairs and the Tenants have been making rent reductions that were ordered in a decision that was rendered on June 3, 2016. The Tenant testified that they have attempted to make contact with the Landlord for him to do the ordered repairs but the Landlord is refusing to communicate with them on this issue.

The Tenant submitted that the Landlords have no regard for the judicial dispute resolution process. This is because the Landlords have failed to make even the most basic repairs to the heating in the home which is an obligation they have under the tenancy agreement and under the Act. The Tenant explained that the Landlords have failed to comply with legally binding orders of the Residential Tenancy Branch as detailed in the previous two hearings held between the parties. In addition, the Tenant stated that the Landlords attempted to have the previous two decisions pertaining to this tenancy reviewed, but they were also unsuccessful in their attempts which were denied by the Residential Tenancy Branch. The Tenants submitted that because the Landlords have failed to provide essential services they have been unable to obtain fire and liability insurance.

The Tenant submitted that the Landlords are not acting in good faith and their reasoning is based on fantasies and nonsensical allegations. The Tenant stated that the Landlord's allegations are a smoke screen for evading his legal responsibilities to maintain the rental unit and this is the main reason why he has served the Notice.

The Tenant disputed the Landlord's testimony that their daughter had been added to the title of the rental home and stated that the Landlords had not provided any documentary evidence for this hearing to show this. The Tenant asserted that in any case, the adding of the Landlords' daughter to the title of the property only results in a dilution of ownership and that is not evidence that the Landlords intend to occupy the rental unit as the ownership of the rental unit is separate to the tenancy agreement.

The Tenant testified that the Landlords are used to and have lived in in their small property for a significant period of time and they seldom spend large amounts of time at their current residence. The Tenants submitted that the Landlords provided no medical evidence to show that there is a medical necessity for the Landlords to move out of their current residence and that the other home they have access to on the 8.5 acres of property is infested with mold and not habitable or usable by them.

The Tenant disputed the Landlord's testimony that they were financially secure because they were receiving an increased amount of income and pension assistance of \$600.00 per month. The Tenant stated that this was a large amount of money and it was likely that it was \$600.00 per year, not per month.

The Tenant testified that the Landlord had provided them with a written offer to purchase the rental unit but the Landlords' offer was trying to bypass legal requirements which they were not prepared to do. Therefore, the tenancy was entered into on a long term basis or until a purchase option could be ironed out.

The Tenant stated that the previous Notice served to them was cancelled by the Residential Tenancy Branch and the Landlord is yet again attempting to use another Notice to end the tenancy which is an abuse of the dispute resolution process. The Tenants submitted that in the previous hearing held on June 2, 2016, the Landlords' Notice was cancelled because there was evidence to suggest that the Landlords were trying to sell the property by way of an advertisement. However, since that time, the Landlords have removed that advertisement and now claim that they want to move into the rental unit which does not support good faith.

The Tenants stated that they disputed the reasons on the notice to end tenancy for cause and the resulting allegations presented by the Landlords in relation to that notice to end tenancy. However, I informed the Tenants that the notice to end tenancy for cause was not the matter to be decided in this hearing.

The Landlord wanted to cross examine the Tenants on their submissions in relation to the notice to end tenancy for cause stating that their submissions and testimony were not correct. However, I informed the Landlord that any evidence pertaining to the notice to end tenancy for cause would not form part of my decision in this matter.

The Landlord was given an opportunity to respond to the Tenant's evidence detailed above and he responded stating that they have a right to return to and live in the property that they own. At the conclusion of the hearing, I attempted to resolve the matter between the parties by way of voluntary mutual agreement. However, while the parties engaged into a discussion, no such resolution was able to be reached.

### Analysis

Firstly, I find the Tenants were served with a Notice which was in the approved form and contains the required information as required by the Section 49(7) and 52 of the Act.

Secondly, I find the Tenants disputed the Notice within the 15 day time limit provided for by Section 49(7) of the Act.

Thirdly, when a tenant is served with a Notice pursuant to Section 49(3) of the Act, and that reason for ending the tenancy is disputed by the tenant, the onus is on the landlord to establish that it was issued in accordance with the Act. In particular Section 49(3) of the Act requires a landlord to intend to occupy the rental unit in good faith. Residential Tenancy Branch Policy Guideline 2 provides detailed guidance on the good faith requirement. It states in part:

*“Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.*

*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. This might be documented through: a Notice to End Tenancy at another rental unit; an agreement for sale and the purchaser’s written request for the seller to issue a Notice to End Tenancy; or a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.”*

*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.”*

[Reproduced as written]

After careful consideration of the parties’ evidence provided in relation to the Notice, it is clear to me that the relationship between the parties in this case has deteriorated and has become strained. However, this is not reason alone for me to end a tenancy. In this case, I must decide whether the Landlords have met the good faith burden to prove the Notice as this is disputed by the Tenants.

I find that the Landlords provided insufficient evidence to show that there is a compelling and medical reason why they need to move back to the rental unit. I find the Landlords seek to rely on oral evidence alone in this respect without any corroboration. The Landlord stated that he did not know that he would have been required to provide such evidence but it is the Landlords that rely on this claim and therefore they are responsible for proving it which I find they have failed to do.

I also accept the Tenants' evidence that a transfer of part ownership to the Landlord's daughter of the rental property does not go to proving the Landlords' intention to move into the rental unit. Notwithstanding the fact that the Landlords failed to provide any documentary evidence of the part transfer of ownership, I agree that this dilution of the ownership is not sufficient to show the Landlords intend to occupy the rental unit.

In making a finding on whether to cancel or uphold the Notice, I take into account that pursuant to the previous hearings held with the same parties by different Arbitrators which the parties referenced in the hearings, the Landlords have failed to comply with those decisions. The Landlords were ordered to complete repairs to the rental unit and the Tenants were allowed to make rent reductions until such time the repairs have been undertaken and completed. However, the Landlords provided no evidence that they complied with the previous decisions, citing the fact that they don't agree with the outcomes. I find that despite the Landlords efforts to have the previous hearings reviewed without success, the Landlords have a legal obligation to comply with orders made by the director of the Residential Tenancy Branch, even if a party feels that they don't agree with the outcome. I find the Landlords have failed to comply with the orders to make repairs and confirmed during the hearing that to date no repairs have been undertaken by them. I find that this undermines the good faith intention required to prove the Notice. I find the evidence before me suggests that the Landlords have no intention to do the required repairs and are using the Notice to evade their legal obligation to do so, thus suggesting an ulterior motive.

I find the Landlord has attempted to use notices to end tenancy for cause which have not been proven to end the tenancy without success. If a landlord is not able to prove a notice to end tenancy for cause, they are not able to then turn to a notice to end tenancy for landlord's use in an effort to bypass the notice to end tenancy for cause and affect the ending of the tenancy in this manner.

Based on the foregoing, I find the Notice dated June 27, 2016 must be cancelled and the tenancy will resume until it is ended in accordance with the Act. Since the Tenants have been successful with the Application, I also allow the Tenants to recover their filing fee of \$100.00. Pursuant to Section 72(2) (a) of the Act, the Tenants may achieve this relief by deducting \$100.00 from their next installment of rent.



The Landlords are cautioned that the previous decisions made on March 21, 2016 and June 3, 2016 are still in full force and effect and the Landlords must comply with those legally binding decisions. Failure to do so may give rise to further compensation payable to the Tenants. However, I would still encourage the parties to engage in discussions in an effort to mutually resolve this dispute in the alternative.

### Conclusion

The Tenants' Application to cancel the Notice dated June 27, 2016 is granted. The tenancy will continue. The Tenants are granted their filing fee. The Landlord's request for an Order of Possession is denied. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 19, 2016

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Residential Tenancy Branch

