



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      mt, dri, cnl, ff

### Introduction:

The tenants apply for several orders, including a dispute of a proposed rent increase, more time to dispute a 2 Month Notice to End Tenancy, an order to cancel the 2 Month Notice to End Tenancy, and recovery of their filing fee.

Both parties participated in the hearing. Issues arose regarding exchange of some of the evidence. The landlord had not received the most recent evidence sent to them by way of registered mail by the tenants, and the tenants had not received the most recent evidence of the landlords, sent by fax to the Residential Tenancy Office but not to the tenants. The parties agreed at the hearing that the hearing need not be adjourned or ended for these reasons, and my decision is based upon the oral testimony of the parties, and the evidence properly received and exchanged.

I declined to hear the tenants' request for more time to dispute the 2 Month Notice, as in fact the tenants' application was filed within the required time frame. I also declined to hear the dispute of a proposed rental increase, as such proposal never proceeded beyond a discussion stage, and no formal Notice of Rental Increase was ever provided to the tenants. These portions of the claim are dismissed accordingly.

### Issues to be decided:

Should the Two Month Notice to End Tenancy be cancelled and the tenancy continue, or is that Notice effective to end this tenancy with an Order of Possession issued to the landlords.

### Background and Evidence:

The subject rental premises are part of a 21 acre parcel purchased by the landlords January 15, 2016. This property lies in the Agricultural Land Reserve, and is subject to Chilliwack Bylaws. By way of a "Residential Tenancy Agreement", on January 31, 2016 the tenants rented a portion of this property for a fixed term of one year ending January 31, 2017. The rented premises include a manufactured home and three brown barns. There are also 3 vacant industrial sized white barns on the site which the tenants are not permitted to use but are required to maintain and clean and keep safe from vandalism, by virtue of their responsibilities as "groundkeepers" of the property.

Pursuant to the Residential Tenancy Agreement the tenants were to pay monthly rent of \$1,200.00. In exchange for renovations and cleanup to the house and property, the tenants received 3 ½ months free rent. The tenants were permitted 3 horses, 2 cows, 3 dogs, 2 cats, 2 gold fish and not more than 40 free range chickens. They consider these animals to be pets (as opposed to livestock).

In addition to the Residential Tenancy Agreement, on March 4, 2016 the tenants and landlords entered into a "Farm lease Agreement". That agreement provides that in exchange for a yearly lease fee of \$5,040.00, the tenants are entitled to use 17 acres on the landlord's property for growing hay, from March 15, 2016 until March 14, 2017.

By early December the landlords realized the income from the property was far less than their expenses, and they risked losing the property. A dialogue occurred between the parties regarding a potential rental increase that would raise the rent to \$2,300.00 per month, an increase that greatly surpassed the permitted rent increase under the Residential Tenancy Regulations. No agreement to a rent increase was ever reached.

On December 28, 2016 the tenants were given a Two Month Notice to End Tenancy, on the ground that the rental unit will be occupied by the landlord or a close family member. The tenants filed their dispute of this Notice, alleging that the Notice was not given in good faith.

The landlords testified that they have now learned that the combination of the ALR requirements and the Chilliwack bylaws prohibit a rental of these premises for typical residential purposes. They contend the property is an agricultural property (as opposed to a residential property), and that this legislation requires that the premises be occupied by families of the land owners or full time employees, but not residential tenants. The landlords further testified that the father of the female landlord was the one who fronted the money to purchase the property. He resides in Shanghai but has a 10 year visa permitting him to reside in Canada. He has a long history of farm management, and intends to move to the premises and manage the farm for the landlords. The landlords further testified that hay growing operation provides minimal income relative to the value of the farm, and their intention is to convert the property to a higher use, such as growing blueberries. If they had to sell the property at this time, they would suffer a loss, as the value has not increased, but they would be subject to a large real estate commission.

The tenants submit that they have worked very hard in cleaning up and renovating the premises, and they consider it their home. Their children are happy at their school. They are not in breach of their agreement, and have paid all rent required. There was no obligation for them to agree to a significant increase in rent, as residential tenancy law permits an increase of only about 3.5%. They contend that now that they have improved the premises, the landlords just want them out and they will rent it out to a new tenant for higher rent.

Analysis:

The tenants essentially argue that the Notice was not given in good faith, and that the true intention of the landlord is to obtain higher rent than the tenants are obliged to pay under their existing agreement.

While the Residential Tenancy Act in section 49(6)(e) permits a landlord to give a 2 month notice for landlord use of the premises, such notice must be given with a good faith intention. The landlords must honestly intend to use the rental unit for the purposes stated on the Notice, which in this case is that the female landlord's father will reside at the premises. Policy Guideline #2 specifically addresses the issue of "good faith" and notes that "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.

In this case, I find that the landlords have demonstrated a good faith intention. In this regard, I accept the landlord's testimony and explanation that the property as a whole is agricultural in nature, and is subject to the requirements of the ALR and Chilliwack's bylaws. The existing tenancy appears to be in breach of those provisions, and the landlords never had legal authority to effectively subdivide the hay acreage from the area that houses the manufactured home. The tenants do not qualify to reside at the premises since they are not family members or employees of the landlord. The landlords did not appreciate these factors when they rented to the tenants a year ago.

There is no doubt there is a financial element involved in the landlord's decision to end this tenancy. Indeed, the landlords have testified that they risk having to sell the property if they cannot find a way to convert it into a viable farming operation. They intend to rely upon the expertise of their father in this regard, and it is logical that he be on hand to manage the conversion and operation of the farm in its early stages at least. While I accept that the landlords previously wanted to raise the tenant's rent, this does not establish that the landlord has a dishonest purpose or motive for ending this tenancy. I accept the landlords' testimony that a vital component of their plan is that their father resides on the premises, and that there is a true intention that he occupy the premises. I therefore do not find that the landlords are acting dishonestly in seeking to end the tenancy.

I add that I have considered but not accepted the landlords' argument that I have no jurisdiction over the tenants' application. While a property of about 20 acres is typically of an agricultural or commercial nature, it was the landlords who agreed to rent a smaller portion of the premises on a residential basis to the tenants, and it was the landlords who served a 2 month Notice under the Residential Tenancy Act. Whether legal or not, it was the intention of both parties that the tenancy agreement was a residential tenancy, subject to the terms of the Residential Tenancy Act. I add however, that the Farm Lease Agreement is clearly agricultural and not residential in nature, and I have no jurisdiction over that agreement.

Based upon all the above, I find that the two month Notice to End Tenancy is effective to end the tenancy February 28, 2017. The tenants' application for an order to cancel the notice is dismissed, as is the tenants' application to recover their filing fee.

Section 55 (1) of the Residential Tenancy Act provides 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 the landlord's notice is proper as to form and content, and the tenants' application to cancel the Notice is dismissed. Those conditions are met, and accordingly, an Order of Possession is granted to the landlords, effective February 28, 2017.

I remind the parties that in cases where a 2 Month Notice to End Tenancy has been given, section 51(1) of the Residential Tenancy Act entitles the tenants to compensation equal to one month's rent from the landlords. If February's rent has already been paid, this sum is payable by the landlord to the tenant.

Conclusion:

The tenants' claim is dismissed. This tenancy ends February 28, 2017 and the landlords are issued an Order of Possession, effective that date.

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: February 03, 2017

---

Residential Tenancy Branch