



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**Landlords:** OPL

**Tenants:** CNL, OLC, FFT

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlords sought:

- an Order of Possession based on the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to sections 49 and 55.

The tenants sought:

- cancellation of the landlords' Two Month Notice pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords.

Landlord D.R., the landlord's agent and both tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord's agent (the landlord) stated that he would be the primary speaker on behalf of the landlords and Tenant MT.S. indicated that he would be the primary speaker on behalf of the tenants.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that they served the tenants with the Landlords' Application for Dispute Resolution (Landlords' Application) and evidentiary package on October 18, 2017. The tenant confirmed that they received the Landlords' Application and evidence and in accordance with sections 88 and 90 of the *Act*, I find the tenants were duly served with these documents.

The tenant testified that they served the landlord with the Tenant's Application for Dispute Resolution (Tenants' Application) and evidentiary package by way of registered mail on October 19, 2017. The landlord confirmed that they received the Tenants' Application and evidentiary package and in accordance with section 88 and 89 of the *Act*, I find the landlord was duly served with these documents.

The tenant testified that they received the Two Month Notice, which was personally served to him in person on September 30, 2017. In accordance with section 88 of the *Act*, I find the tenants were duly served with the Two Month Notice.

Issue(s) to be Decided

Should the Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession based on the Two Month Notice?

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The tenant provided written evidence that this tenancy commenced on February 01, 2000, with a current monthly rent of \$1,076.00, due on the first day of each month. The landlord confirmed that the new landlord retains a security deposit in the amount of \$450.00.

A copy of the signed landlords' September 30, 2017, Two Month Notice was entered into evidence. In the Two Month Notice, requiring the tenants to end this tenancy by December 01, 2017, the landlord cited the following reason:

*All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The landlord entered into written evidence:

- a copy of a signed notarized declaration for the rental unit dated December 08, 2017, stating that the new owners' purpose in buying the property is for their principal residence;

- a copy of a Contract of Purchase and Sale Addendum for the rental unit, dated October 25, 2017, which states that the buyer intends on occupying the rental unit.
- a copy of a letter from Landlord D.R. explaining the circumstances surrounding the Two Month Notice and the reason that the landlords need an Order of Possession; and
- a copy of an e-mail from the landlord's agent to the tenants dated September 30, 2017, explaining the reason for the Two Month Notice and that the landlords need vacant possession of the unit for December 01, 2017.

In addition to some of the same evidence that the landlord provided, the tenants also provided a copy of a new fixed term tenancy agreement and addendum, to commence on October 01, 2017, with a monthly rent of \$1,800.00, that was offered to the tenants prior to the Two Month Notice being served to them;

The landlord testified that the rental unit, which is a part of a four-plex with two upper units and two lower units, has been sold to new owners. The landlord submitted that the new owners intend on occupying one of the upper units and the owners' parents intend on occupying the other upper unit. The landlord stated that the previous owners negotiated with the new owners a new fixed term tenancy which would enable the tenants to stay until April 30, 2018, and that when the new agreement was not agreed to by the tenants; the landlord served the Two Month Notice to them.

The tenant testified that the new tenancy agreement had a 67% increase in the rent owing and questioned the good faith of the new owners regarding the Two Month Notice as it was predicated on the tenants' refusal to accept increased rent. The tenant stated that they were told that they would not have to pay the increased rent until December 01, 2017, but when the tenants requested to have that written into the agreement, the landlord refused. The tenant questioned the addendum that was attached to the new tenancy agreement and felt that the terms were unreasonable.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the rental unit is sold and the new owners or their close family member is going to occupy the rental unit.

Section 49 of the *Act* provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two

Month Notice was issued to the tenant in good faith and that the landlord truly intends on doing what they said they would do on the Two Month Notice. As the tenant disputed this notice on October 11, 2017, and since I have found that the Two Month Notice was served to the tenant on September 30, 2017, I find the tenant has applied to dispute the Two Month Notice within the time frame provided by section 49 of the *Act*.

Residential Tenancy Policy Guideline #2 defines “good faith” as 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. The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

I have reviewed all documentary evidence and the testimony of both parties. Based on the above and a balance of probabilities, I find that the landlord has proven that the new owners intend to use the rental unit in a manner allowed by section 49 of the *Act*. I further find that the landlord issued the Two Month Notice to the tenants in good faith.

I find that it is not disputed that the new owners have purchased the rental unit. I further find that the landlords have declared on the Contract of Purchase and Sale Addendum as well as the signed notarized declaration provided that the new owners intend on occupying the rental unit. I accept the landlords’ testimony that the owners intend on occupying one of the upper units and their parents intend on occupying the other upper unit.

I accept the landlord’s testimony that the previous owner tried to negotiate an agreement with the new owners in good faith that would enable the tenants to stay in the rental unit for a fixed term. I find that this fixed term tenancy agreement that was refused by the tenants supports the good faith component of the Two Month Notice as it demonstrates that the new owners were not looking for a long term tenant at an increased rent, rather a fixed term that would enable them to take possession of the rental unit at a future date. I find that the new owners wanted vacant possession of the rental unit and were only willing to delay taking possession of the unit if the terms of their tenancy agreement were accepted by the tenants.

For the above reasons, the tenants' application to set aside the Two Month Notice is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession as long as the notice complies with section 52 of the *Act*. I find that Two Month Notice complies with section 52 of the *Act*.

As the landlord and the tenants agreed that the tenants have paid the monthly rent for January 2018, for use and occupancy only, I grant an Order of Possession to the landlord effective on January 31, 2017

As the tenants have not been successful in this application and the tenancy will not continue, I dismiss the tenants' request to recover the filing fee from the landlords and for the landlords to comply with the *Act*, without leave to reapply.

#### Conclusion

I dismiss the tenant's Application, without leave to reapply.

I grant an Order of Possession to the landlord **to take effect by 1:00 p.m. on January 31, 2017, after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 09, 2018

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Residential Tenancy Branch