



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, LRE, PSF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), an Order for the Landlord to provide services or facilities agreed upon but not provided, and an Order suspending or setting conditions on the Landlord’s right to enter the rental unit.

The hearing was convened by telephone conference call and was attended by the Landlords the Tenants, and two witnesses, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, the decision and any Orders issued in their favour will be sent to them in the manner requested in the hearing.

### Preliminary Matters

#### **Preliminary Matter #1**

In their Application the he Applicants sought multiple remedies under multiple sections of the Act, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a Two Month Notice, I find that the priority claim relates to whether the tenancy will continue. I also note that the Tenants were given a priority hearing date to deal with this specific issue. Further to this, I find that the other claims by the Tenants are not sufficiently related to the continuation of the tenancy and as a result, I exercise my discretion to dismiss the Tenants' claims for an Order for the Landlord to provide services or facilities agreed upon but not provided, and an Order suspending or setting conditions on the Landlord's right to enter the rental unit. I grant Tenants leave to re-apply for these other claims.

### **Preliminary Matter #2**

The Applicants argued that they received a piece of evidence from the Landlord on February 7, 2018, only 6 days prior to the hearing and requested that this evidence be excluded from consideration because it was not received by them within the timeline set-out in the Rules of Procedure. The landlords acknowledged that they submitted the document to the Tenants and the Residential Tenancy Branch (the "Branch") late but argued that it is simply a signed copy of a document already submitted within the applicable time limits. As a result, they stated that the Tenants did not require additional time to consider or rebut it.

Rule 3.15 of the Rules of Procedure states that the respondent's evidence must be received by the applicant and the Branch not less than seven days before the hearing. Rule 3.17 of the Rules of Procedure states that evidence not provided to the other party and the Branch in accordance with the *Act* or the Rules of Procedure may or may not be considered depending on whether the party can show to the arbitrator that the evidence was not available when they served and submitted their evidence. After having reviewed the evidence in question, I note that it was signed on November 24, 2017, well in advance of the hearing date. As the hearing was scheduled for February 13, 2018, I find no reason that this evidence could not have been submitted at least seven days before the hearing in accordance with rule 3.15 of the Rules of Procedure and I accept that Tenants' testimony that they had insufficient time to consider and respond to it. As a result, I find that it would be administratively unfair and a breach of the Rules of Procedure to allow accept this evidence for consideration and I have therefore excluded it from consideration in this matter.

### **Preliminary Matter #3**

At the outset of the hearing I identified that both parties had witnesses present with them in the hearing. As a matter of fairness, the witnesses were excluded from the proceedings except when called to provide testimony.

### Issue(s) to be Decided

Are the Tenants entitled to an Order cancelling the Two Month Notice?

If the Tenants are unsuccessful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The Landlords testified that they personally served a Two Month Notice on the Tenants on November 27, 2017, and the Tenants acknowledged receiving the Two Month Notice on this date. The Two Month Notice in the documentary evidence before me, dated November 27, 2017, has an effective vacancy date of January 31, 2018, and indicates that the reason for ending the tenancy is because the landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The Landlords testified that the Tenants rental unit is located in a 6-plex built in 1954 and that the property requires extensive renovations which necessitate vacant possession. The Landlords testified that there are significant issues with the original electrical wiring of the building, such as water damage and wire fatigue, and that the wiring needs to be immediately replaced and upgraded to meet code as it currently presents a significant fire risk to the occupants and the building. The Landlords testified that the fire alarms also need to be hardwired into the buildings electrical system to meet current code requirements and that the furnace and central air systems will be replaced with baseboard heaters. The Landlords testified that in order to replace the electrical and the heating system, the water and electrical will need to be shut off for a minimum of 4-6 weeks and the walls, floors, and ceilings will be need to be opened and replaced. As a result, the Landlords stated that the rental unit will not be suitable for occupation.

In support of their testimony the Landlords provided a permit for the work, three proposals from contractors to complete the work, and an invoice for plumbing work previously completed. The Landlords testified that have accepted and signed one of the proposals and that they have sufficient funds to complete the renovations.

The witness for the Landlords, who was a former occupant of the building and an agent for the Landlord, testified that she has been shocked by appliances in her own unit due to issues with the wiring and that the occupant in the adjacent unit also experienced significant electrical issues. Further to this, the witness testified that she was advised by an electrician that the electrical panel is so old that the parts cannot even be replaced.

The Tenants testified that they have never experienced any electrical issues in their unit, stated that the Landlords have failed to complete required maintenance and repairs in the past, and argued that the Landlords should have completed any required maintenance over the course of the tenancy thereby negating the need to end the tenancy for these extensive renovations. Further to this, the Tenants testified that have received several eviction notices in the past and that they believe the Landlords are simply trying to get rid of them so that they can redevelop the property and rent the units for more money.

The witness for the Tenants, who is also an occupant of the building, testified that they have never experienced any electrical issues and have received several eviction notices from the Landlord in the past. The witness stated that they believe the Landlords intend to renovate the property so that they can increase rent.

The Landlords denied the Tenants' claims that they are simply trying to evict them and stated that the cost and scope of this renovation is very significant and that it would be illogical to conclude that they would evict all other occupants of the six-plex and spend tens of thousands of dollars simply to evict the Tenants. Instead, the Landlords argued that the renovations must be completed for health, safety, and liability reasons.

### Analysis

Section 49 of the *Act* states that subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Although the Tenants argued that the Landlord should have completed this maintenance earlier and over time, section 49 of the *Act* does not require the landlord to demonstrate that the renovations sought could not have been undertaken at an earlier date and allows a landlord to end the tenancy to complete the renovations provided they meet the conditions set out under section 49.

The Tenants also argued that the Landlord's intentions with regards to the Two Month Notice are dishonest as the Landlords are simply trying to evict them and obtain more rent. In support of this argument the Tenants testified that they have previously been served other notices to end tenancy. Although no previous decisions or notices to end tenancy were before me from the Tenants to corroborate these allegations, the Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #2 states that 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 and to establish that they do not have another purpose that negates the honesty of intent or an ulterior motive for ending the tenancy.

The Landlords testified that given the scope and cost of the renovations required, and the fact that all other occupants of the six-plex have also been served notices to end tenancy, it would be illogical to conclude that they are completing these renovations simply to evict the Tenants. Further to this, the Landlords stated that their documentary evidence clearly demonstrates their honest intentions to complete the renovations and supports their testimony that the renovations are required for health, safety, and liability, reasons, not for financial gain.

Based on the documentary evidence and testimony before me, and keeping in mind that the burden of proof in this matter is on a balance of probabilities, the Landlords have satisfied me that they intend, in good faith, to renovate the rental unit in a manner that requires vacant possession, that they have all the necessary permits and approvals required by law to do so, and that there is no ulterior motive for ending the tenancy. As a result, I am satisfied that the Landlords had cause pursuant to section 49 of the *Act* to serve the Two month Notice and to end the tenancy. As a result, I dismiss the Tenant's Application seeking to cancel the Two Month Notice without leave to reapply.

I also find that the Two Month Notice complies with section 52 of the *Act* as it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the Notice and the grounds for ending the tenancy, and is in the approved form. Given the above, and pursuant to section 55 of the *Act*, the Landlord is therefore entitled to an Order of Possession. As the parties agreed that rent for the month of February, 2018, has been paid, the Order of Possession will be effective at 1:00 P.M. on February 28, 2018.

Although the Tenant's did not seek compensation pursuant to section 51 of the *Act* and instead sought to cancel the Two Month Notice, the parties should be aware that

section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 51(2) of the Act also states that in addition to the amount payable under subsection (1), if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

### Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on February 28, 2018**, after service of this Order on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 21, 2018

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Residential Tenancy Branch