



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL ERP OLC

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on February 21, 2018. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties were represented at the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenants' documentary evidence. However, during the hearing the Landlord stated that they did not provide the Tenants with a copy of their documentary evidence because it contained sensitive medical information which they did not want the tenants to have. The Landlord asked for me to consider the medical evidence because he stated it shows that the Landlord acted in good faith when they issued the 2-Month Notice for Landlord's Use of the Property. Counsel for the Tenants stated that this evidence should not be considered as they have not been provided with copies.

I acknowledge why the Landlord did not give the Tenants a copy of their evidence (because it had sensitive information). However, I find it would be improper for me to consider this evidence because it has not been exchanged in accordance with the rules of procedure. Although I will not consider the documentary medical evidence from the Landlord because it was not served to the Tenants, I will accept the testimony provided on these issues at the time of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, some of which were not sufficiently related 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.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the Tenants' application, with leave to reapply, with the exception of the following claim:

- to cancel the 2-Month Notice to End Tenancy for Landlord's Use of the Property (the Notice).

#### Issues(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The Tenants acknowledged receiving the Notice on November 20, 2017, the fifth day after the Landlord sent it by mail. The Landlord issued the Notice for the following reason:

*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).*

In the hearing, counsel for the Landlord, stated that the Landlord has issued this Notice because he wants his daughter to move into that unit so she can be close by to care for him. Counsel for the Landlord stated that this rental unit is the main floor of a house (2 bedroom unit) and there is a lower unit in that house which is only a 1 bedroom unit, and is too small for the Landlord's use. The Landlord's counsel also stated that the Landlord lives basically next door in another house, which also has a rental unit above it. The Landlord's counsel stated that the Landlord and his wife are both nearly 90 years old and are starting to require significant help with day-to-day tasks; he also stated that the Landlord and his wife both have medical issues and it is becoming increasingly important for them to have help nearby.

The Landlord's daughter also attended the hearing and stated that she currently lives too far away to be able to help with day-to-day support (shopping, medical help, basic assistance). Although the Landlord's counsel and daughter acknowledged that the Landlord has several rental properties, they want this particular unit for their use. The Landlord's daughter does not feel she should have to compromise on which place she lives and it is up to the Landlord which

unit he wants to use. Counsel for the Landlord stated that unit below the Tenants' unit is below ground and is only a 1 bedroom unit, which is not suitable for the Landlord's daughter and her daughter.

The Landlord's daughter also acknowledged that there is a rental unit above her parents at their house (almost next door) but she stated that unit is not suitable because there needs to be a bit of separation and independence for her sake. Counsel for the Landlord stated that, ultimately, the Landlord has more than one rental property but this is the one they have chosen to utilize, because it is above ground, more than one bedroom, and is the right distance away to allow the daughter to care for her aging parents.

Counsel for the Tenants stated that the Landlord has issued the Notice in bad faith. She pointed out that there has been a degradation in the relationship between the Landlord and the Tenants ever since May 2017 when there was an issue with the laundry. Counsel for the Tenants further stated that since that time, there have been other issues including a disagreement surrounding the painting of the house. The Tenants stated that the Landlords have expressed at one point that they may demolish the unit, and have also stated that to the Tenants that they are getting a good deal on rent. Then, the Tenants stated that there was a further degradation in the relations with the Landlord at the end of October and early November 2017. Shortly after this time, the Landlord served the Tenants with the Notice.

Counsel for the Tenants alleges that there may be an ulterior motive to get the tenants out and increase the rent. The Tenants stated that the Landlord has not demonstrated why they cannot use one of the other units instead.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that they intend in good faith to occupy the unit (as he has indicated on his 2-Month Notice).

Based on the evidence and testimony before me, I make the following findings:

I acknowledge that there has been degradation in the relationship between the Landlord and the Tenants. The Tenants' are alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because their relationship has soured, and to get more money from the rental unit, rather than for the reason listed on the Notice. However, in response to the Tenants' allegations of bad faith, the Landlord's daughter expressed that the Landlord (her father) is now at an age where he requires substantial help with daily tasks. The Landlord's daughter stated that this particular unit is the one she wants to occupy because it is close by (nearly next door), but not too close (such as the unit directly above the Landlord), and it allows her to be readily available. The Landlord's daughter also expressed that she wants this particular unit because it is above ground and is a more appropriate size for her. In this case, I have considered that the Landlord and his wife are nearly 90 years old, and I accept that they likely require assistance

with daily tasks. I also accept that the Landlord's daughter's current house is too far away to allow her to help care for her parents, which speaks to her need to utilize the rental unit in question.

Ultimately, after looking at the totality of the situation before me, I find the explanation from the Landlord's daughter regarding her need to be closer to her aging parents and her need to occupy the rental unit is reasonable and I find the Tenants' allegations of bad faith are not sufficiently demonstrated, such that I would find that Landlord's daughter did not intend to occupy the rental property.

I note that under the Act, if the Landlord does not move into the rental unit as set out in the 2-month notice, the Tenants would be entitled to compensation as follows:

Section 51 of the Act reads,

...

(2) In addition to the amount payable under subsection (1), if

(a) 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, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Overall, I find the Landlord has sufficiently supported his reasons to issue the 2-month Notice. The Tenants' application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

As the Tenants were not successful with their application, I dismiss their claim to recover the cost of the filing fee.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy dated November 15, 2017, is dismissed. Further, I dismiss the Tenants' request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective 2 days after service on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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 23, 2018

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Residential Tenancy Branch