



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL OLC RP MNDC FF

### Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on March 17, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 15, 2018 (the "Two Month Notice");
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement;
- an order that the Landlord make repairs to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing in person. The Landlord attended the hearing in person and was accompanied by E.G., her legal counsel. The Landlord also called a witness, T.A. All giving oral testimony provided a solemn affirmation.

The Tenants testified the Landlord was served with the Application package in person within days after receiving the Notice of Dispute Resolution Hearing. The Landlord acknowledged receipt. Further, the Tenants testified that they provided documentary evidence to the Landlord on May 26 and 27, 2018. On behalf of the Landlord, E.G. confirmed receipt but submitted that the Tenants' documentary evidence should not be considered as it was not served on time in accordance with the Rules of Procedure. The parties were advised that the evidence would be considered and that any specific concerns about admissibility could be addressed on a case by case basis.

On behalf of the Landlord, E.G. advised that the documentary evidence upon which the Landlord intended to rely was served on the Tenants on May 23, 2018. The Tenants acknowledged receipt.

No further issues were raised during the hearing with respect to the admissibility of documentary evidence. Accordingly, I find the above documentary evidence was sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were specifically asked to refer me to documents upon which they intended to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was directed. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address during this hearing was whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' request to cancel the Two Month Notice and to recover the filing fee paid to make the Application. The Tenants are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

#### Issues to be Decided

1. Are the Tenants entitled to an order cancelling the Two Month Notice?
2. Are the Tenants entitled to an order granting recovery of filing fee?

#### Background and Evidence

The Tenants occupy the lower unit at the rental property. The parties confirmed the tenancy began on April 1, 2015. At that time, only J.L. was a tenant. B.B. moved into the rental unit on or about February 15, 2017. Rent in the amount of \$1,300.00 per month is due on the first day of each month. The Landlord holds a security deposit in the amount of \$600.00.

The Landlord testified she wishes to move into the lower unit currently occupied by the Tenants. Accordingly, she issued the Two Month Notice, which was served on the Tenants in person on March 15, 2018. The effective date of the Two Month Notice was May 31, 2018. The Tenants confirmed receipt of the Two Month Notice on that date. The Two Month Notice was issued on the basis that the Landlord intends in good faith to occupy the rental unit. In support, the Landlord testified that she was living in the upper unit but has decided to move into the lower unit due to her financial circumstances. She has moved out of the upper unit, rented it to three students, and is currently living with her parents pending the resolution of this dispute. The Landlord's belongings are currently in storage, a receipt for which was submitted in support.

The Landlord also called a witness, T.A., to give oral testimony, which was provided to supplement his type-written statement. T.A. stated that he moved into the upper unit, previously occupied by the Landlord, on or about April 28, 2018. He shares the unit with two fellow students who, like him, are varsity athletes. T.A. cited the proximity to his university and training as factors for wanting to rent the upper unit. T.A. testified to his intention to rent the upper unit for the foreseeable future.

In reply, the Tenants provided a number of vague allegations that the Landlord is not acting in good faith and does not intend to occupy the rental unit. They testified that they "feel like" the Landlord has not acted in good faith. The Tenants suggested that a number of points made in the Landlord's written submissions are untrue and are personal attacks. Although asked to refer me to any documentary evidence upon which they intended to rely, the Tenants referred only to paragraphs 46 and 47 of the Landlord's written submissions. They suggested these sections were vague and supported their position with respect to good faith.

In addition, the Tenants also advised that despite repeated requests, the Landlord did not make repairs to the rental unit when asked. Further, in response to the testimony of T.A., the Tenants questioned why he provided the Landlord with his statement and submitted that the statement was coached. T.A. responded by relating an experience with J.L. that made him feel uncomfortable.

## Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49 of the *Act* permits a landlord to take steps to end a tenancy for the reasons enumerated therein. In this case, the Two Month Notice was issued on the basis that the Landlord intends in good faith to occupy the rental unit. The Application confirmed, and I find, that the Tenants received the Two Month Notice on March 15, 2018. The Landlord testified that she intends in good faith to occupy the rental unit.

The Tenants submitted that the Landlord has not acted in good faith. Policy Guideline #2 provides direction when addressing a claim that a party has not acted in good faith. It states:

*Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.*

*In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that 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 tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*

*Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:*

- *a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));*
- *a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or*

- *a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).*

*If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.*

*If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.*

[Reproduced as written.]

In this case, I have considered the Tenants' submissions. I have also considered the application of Policy Guideline #2 to these circumstances. I am satisfied the Landlord intends in good faith to occupy the lower rental unit. I accept the Landlord's evidence that she has moved out of the upper unit, rented it to students, moved in with her parents, and currently has her belongings in storage. I find it is unlikely these actions are part of a conspiracy to end the tenancy. There is also insufficient evidence of intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement. Further, the Tenants provided only vague allegations that the Landlord was not acting in good faith. Although not obligated to do so, I find the Tenants' submissions which were not sufficiently substantiated by evidence. Accordingly, the Tenants' Application to cancel the Two Month Notice is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, section 55 of the *Act* requires that I issue an order of possession to the landlord, as long as the notice to end tenancy complies with the form and content requirements of section 52 of the *Act*. The language in the *Act* is mandatory. Having reviewed the Two Month Notice, I find it complies with the requirements of section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, I find the Landlord is entitled to an order of possession. As the effective date of the Two Month Notice was May 31, 2018, the Tenants are overholding. Accordingly, the order of possession will be effective two (2) days after service on the Tenants.

### Conclusion

Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. The order may be filed in 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: June 6, 2018

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Residential Tenancy Branch