



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated February 26, 2018 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62.

The tenant and the two landlords, landlord SS ("landlord") and "landlord KS" (collectively "landlords") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 50 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application and the tenant was duly served with the landlords' written evidence package. The landlords confirmed that although they received the tenant's written evidence late on May 23, 2018, less than 14 days prior to this hearing date and contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, they had no objection to me considering the evidence at the hearing or in my decision.

The landlord said that the tenant was personally served with the landlords' 2 Month Notice on February 27, 2018. The tenant confirmed receipt of the 2 Month Notice on her door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on February 27, 2018.

At the outset of the hearing, the tenant confirmed that she did not want to pursue her application for an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement. Accordingly, this portion of the tenant's application is withdrawn.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to change the surnames of both landlords, as they both recently got married and are now using different legal surnames. Both parties consented to this amendment during the hearing.

### Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant stated that her month-to-month tenancy began sometime in 2009. The landlord stated that she purchased the property on January 31, 2018. Both parties agreed that monthly rent in the amount of \$450.00 is payable on the first day of each month. The tenant claimed that she paid a security deposit of \$225.00 to the former landlord but the landlord claimed that she did not receive the deposit from the former landlord. The tenant continues to reside in the rental unit, which the landlord said is a one bedroom, one bathroom property of approximately 350 to 400 square feet.

The landlord stated that she lives in the main house with her husband and stepfather, the tenant lives in one cabin and the landlord's biological father lives in the other cabin, all on the same property. The landlord claimed that the main house has three bedrooms and one bathroom and is 1,500 square feet. She said that another tenant lives below in the main house, which is two bedrooms and 750 square feet, rented for \$750.00 per month.

A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the landlords identified the following two reasons for seeking an end to this tenancy on page 2 of the notice:

- *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).*
- *The landlord has all necessary approvals and permits required by law to demolish the rental unit, or renovate or repair the unit in a manner that requires the rental unit to be vacant.*

The landlord claimed that she issued the 2 Month Notice to the tenant because she wants her stepfather to move into the rental unit after she renovates and repairs it first. She said that she wanted to renovate the bathroom, kitchen and flooring and that no permits were required for this work. The landlord stated that when she bought the property, she always intended for her stepfather to move into the rental unit because he is sick and needs to be close by but not living with the landlords as he currently is, as she wants her own private space for her husband and her future kids. She stated that she advised the tenant about this intention when she bought the property.

The landlord said that she does not want her stepfather to move into the unit below hers in the main house because he does not need a big two-bedroom 1,500 square foot space when he is alone, she needs a smaller space that rents for less. The landlord provided a letter from her realtor indicating her intentions for the property when she bought it.

The landlord confirmed that she issued the notice in good faith, she did not have any personal issues against the tenant, she did not issue any other notices to end tenancy to the tenant, and there have been no previous RTB hearings between the parties.

The tenant claimed that the landlords issued the 2 Month Notice in bad faith. She said that she heard gossip that the landlords did not like her and were discriminating against her, that they wanted to evict her, and that the landlord's stepfather was not really sick and needing to live in the rental unit. The tenant claimed that the landlord's stepfather was not even living with the landlords at this time, as she did not see him at the property.

### Analysis

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after she receives the notice. The tenant received the 2 Month Notice on February 27, 2018 and filed her application to dispute it on March 15, 2018. Therefore, the tenant is outside the fifteen day time limit under the *Act*.

As per section 64(3)(c) of the *Act*, I amend the tenant's application to grant her more time to make her application to cancel the 2 Month Notice pursuant to section 66 of the *Act*. I accept the tenant's evidence that she was unsure how the deadline of fifteen days was counted, assuming that since the notice was posted to her door, the deemed service provision allowed her three days to receive it, after which she applied. The tenant's application was filed one day late, as it was due by March 14, 2018. Further, the tenant did not apply past the effective date of the 2 Month Notice, which is June 1, 2018. Therefore, I find that the tenant is not barred by section 66(3) of the *Act*, from applying for more time to cancel the notice. The onus, therefore, shifts to the landlords to justify the basis of the 2 Month Notice.

Section 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(6)(b) of the *Act* states that a landlord has all the necessary approvals and permits required by law to renovate or repair the unit in a manner that requires it to be vacant.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*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 that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*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. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.*

I accept the landlord's testimony that she requires the rental unit for her stepfather to move in after renovations and repairs are first completed. I accept that the landlords want privacy in their own home where they want to have children one day. I accept that the unit below the landlords' home is a much bigger space which brings in a higher market rent so the landlord does not want her stepfather to live there. I accept that the tenant's rental unit is a smaller space suitable for one person with less market rent so it is a more suitable place for the landlord's stepfather to live.

I find that the tenant failed to show that the landlords did not issue the notice in good faith. The tenant's claims are mainly based on speculation. There have been no other notices to end tenancy issued to the tenant or previous RTB hearings, showing that the landlords may have issued the notice in bad faith.

Based on a balance of probabilities and for the above reasons, I find that the landlords intend to renovate and repair the rental unit prior to the landlord's stepfather moving in to the rental unit in good faith to occupy it. I find that the landlords have met their onus of proof under section 49 of the *Act*.

I dismiss the tenant's application to cancel the 2 Month Notice. I uphold the landlords' 2 Month Notice, dated February 26, 2018. Pursuant to section 55 of the *Act*, I grant an **order of possession to the landlords effective at 1:00 p.m. on July 31, 2018**. I find that the tenant requires more time to vacate the rental unit, as she stated during the hearing that she has disabilities. I find that the landlords' 2 Month Notice complies with section 52 of the *Act*.

During the hearing, the landlords confirmed that they refused the rent from the tenant for June 2018 and the tenant had not yet been provided with one month free rent compensation pursuant to section 51 of the *Act* and the 2 Month Notice. I order the landlords to provide the tenant with one month free rent compensation prior to her vacating the rental unit.

### Conclusion

The tenant's application for an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement is withdrawn.  
The remainder of the tenant's application is dismissed without leave to reapply.

I grant an **Order of Possession to the landlords effective at 1:00 p.m. on July 31, 2018**. Should the tenant 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: June 21, 2018

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Residential Tenancy Branch