



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUNSTAR REALTY LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL DRI LRE FF

### Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on May 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 May 1, 2018 (the "Two Month Notice");
- an order relating to a disputed notice of rent increase;
- an order suspending or setting conditions on the Landlords' right to enter the rental unit; and
- an order granting recovery of the filing fee.

The Tenants were all represented by H.Y.C. The Landlord W.W. attended the hearing on his own behalf. The corporate Landlord was represented at the hearing by T.H., an agent. Witnesses D.M. and W.L., property managers, were also in attendance. V.H.W. and S.Y.S, the parents of W.W., attended on the Landlords' behalf.

On behalf of the Tenants, H.Y.C. testified the Tenants' Application package was served on the Landlords by registered mail. The Landlords acknowledged receipt. On behalf of the Landlords, T.H. testified the documentary evidence to be relied upon by the Landlords was served on the Tenants in person. H.Y.C. acknowledged receipt on behalf of the Tenants. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents for the purposes 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. 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.

### 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 cancelling a disputed rent increase?
3. Are the Tenants entitled to an order suspending or setting conditions on the Landlords' right to enter the rental unit?
4. Are the Tenants entitled to an order granting recovery of the filing fee.

### Background and Evidence

The parties confirmed the tenancy began on May 18, 2013. Currently, rent in the amount of \$1,269.80 is due on the first day of each month. The Tenants paid a security deposit of \$595.00 and an "access device deposit" of \$80.00, which the Landlords hold.

The Landlords issued the Two Month Notice, which has an effective date of July 31, 2018, on the basis that the Landlord or a close family member intends to occupy the rental unit. The parents of W.W. intend to move into the rental unit after minor renovations. Although T.H. testified the Two Month Notice was sent to the Tenants by registered mail on May 3, 2018, H.Y.C. advised it was not collected until May 17, 2018.

T.H. testified that the rental unit was purchased with the intention that W.W.'s parents would move into the rental unit in their retirement. It is convenient for them to do so now because of their age, health issues, proximity to public transit, and an inability to maintain their current home. V.H.W., gave evidence in support and indicated that he and S.Y.S., who are 69 and 70 years of age, respectively, will move into the rental unit as soon as it is vacant and some minor renovations are completed.

On behalf of the Tenants, H.Y.C. testified she believes the Landlords' true motivation is to increase rent. She referred to an email dated April 17, 2018, in which T.H. asked the Tenants if they would agree to a rent increase greater than the increase permitted under the *Act*. The reason for the increase was because W.W. was assisting his parents financially so the tenancy could continue at a higher rate, or his parents would have to

move in. The Landlords denied they are motivated by rent but suggested that W.W. has an obligation to assist his family, which would require higher rent from the Tenants if they elected to remain in the rental unit.

### 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 rental unit will be occupied by the Landlord or a close family member of the Landlord.

I have considered the evidence and submissions of the parties. I find there is insufficient evidence before me to conclude that W.W.'s parents will not move into the rental unit. Although H.Y.C. suggested the email confirmed the Landlords have an ulterior motive – that is, to increase rent – I do not accept this argument. Rather, I accept that the Landlords, while balancing the interests of the Tenants and W.W. offered to continue the tenancy at a higher rate because of the cost to provide financial assistance to his parents. However, as the Tenants did not agree to the proposed rent increase, W.W. decided his parents would occupy the rental unit. I find there is sufficient information to uphold the Two Month Notice. Accordingly, the Tenants' Application to cancel the Two Month Notice is dismissed.

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, which will be effective two (2) days after service on the Tenants.

The Tenant also sought an order relating to a disputed rent increase. However, I find the Landlord did not issue a notice of rent increase, but merely raised the issue as part of a discussion about ending the tenancy. This aspect of the Application is dismissed.

The Tenants also sought an order suspending or setting conditions on the Landlords' right to enter the rental unit. H.Y.C. testified that she has children and does not want

the Landlords to enter the rental unit when she is not there. However, I find there is insufficient evidence before me to make such an order. The Landlords remain entitled to enter the rental unit in accordance with section 29 of the *Act*. This aspect of the Tenants' Application is dismissed.

As the Tenants have not been successful, I decline to grant an order for the recovery of the filing fee.

### Conclusion

The Tenants' Application is dismissed, without leave to reapply.

Pursuant to section 55(1) of the *Act*, I grant the Landlords an order of possession, which will be effective on July 31, 2018, at 1:00 p.m. The order of possession 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: July 16, 2018

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Residential Tenancy Branch