



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes          CNL, OLC, FF

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the tenants' notice of hearing package in person on May 14, 2018. The tenants stated that the landlord was served with the submitted documentary evidence in person (pictures via text message, documents in person) on June 25, 2018. The landlord disputes this claim. The tenants were unable to provide any supporting evidence of service. Both parties confirmed that the landlord served the tenants with his submitted documentary evidence in person on June 24, 2018. I accept the affirmed testimony of both parties and find on a balance of probabilities that the tenants failed to properly serve the landlord with their submitted documentary evidence. As such, the tenants' documentary evidence is excluded from consideration in this hearing. The landlord's documentary evidence is deemed served on June 24, 2018 as per section 90 of the Act.

### Preliminary Issue(s)

The tenants have applied for an order for the landlord to comply with the Act, regulations or tenancy agreement. It was clarified that the tenants seek a negotiated end to the tenancy dated for this portion of their application. The landlord stated that he was unwilling to negotiate an end to the tenancy. As such, this portion of the tenants' application is dismissed. The hearing shall proceed on the remaining two portions as filed.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 Month Notice?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

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

Both parties agreed that there is no signed tenancy agreement, but provided undisputed affirmed testimony that this is a month-to-month tenancy. The monthly rent is \$575.00 payable on the last day of each month. A security deposit of \$250.00 was paid.

Both parties provided undisputed affirmed testimony that the landlord served the tenants with a 2 Month Notice dated April 29, 2018 in person on April 29, 2018. The 2 Month Notice sets out an effective end of tenancy of June 30, 2018 and one reason listed as:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenants claim that the landlord will not in good faith occupy the premises as they were told by the landlord that "he will fix up the basement suite and rent it out again." The tenants were told by the landlord after a city inspection "to ask me to leave the suite."

The landlord disputes this claim stating that his daughter, A.D.K. will occupy the rental space with her partner. In support of this claim A.D.K. has provided a typed letter dated May 25, 2018. The tenant reiterated that he was told by the landlord that he would renovate the rental space and re-rent it and that the landlord received notification from the city inspectors to have the space empty. The tenant was unable to provide any further evidence in support of their claims.

Analysis

Section 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

According to section 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

In this case, I find that the tenants were served with the 2 Month Notice dated April 29, 2018 in person on April 29, 2018. The tenants filed for dispute resolution on May 7, 2018. Although both parties have provided conflicting and contradictory testimony on the reasons for ending the tenancy, I find on a balance of probabilities that the landlord has been successful in providing sufficient evidence to support the reason for ending the tenancy. The landlord has provided a signed and dated letter dated May 25, 2018 from his daughter, A.D.K. confirming that she would be occupying the rental space. As such, the tenant's application to cancel the 2 Month Notice is dismissed. The 2 Month Notice dated April 29, 2018 is upheld.

As the effective end of tenancy has now passed the landlord is granted an order of possession to be effective two days after service upon the tenants.

### Conclusion

The tenants' application is dismissed.  
The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the 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: July 04, 2018

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Residential Tenancy Branch