



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenants' application pursuant to section 49 of 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).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's son (the landlord) represented the landlord's interests in this matter, and confirmed several times during this hearing that he was fully authorized to act on his mother's behalf.

As the tenants confirmed that they received the landlord's 2 Month Notice posted on their door by the landlord on May 15, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenants handed the landlord a copy of the tenants' dispute resolution hearing package well in advance of this hearing, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the landlord confirmed that they had received copies of the tenants' written evidence on June 23, 2018, I find that the tenants' written evidence was served in accordance with section 88 of the *Act*. The landlord testified that he uploaded copies of the landlord's written evidence on the Residential Tenancy Branch's online Service Portal, and sent the tenants email confirmation that this had been done. The tenants confirmed that they received this email confirmation, but did not receive actual copies of the landlord's written evidence and had not viewed that written evidence. Since the landlord did not serve evidence to the tenants in accordance with section 88 of the *Act*, I advised the parties that I would be unable to consider the landlord's written evidence in reaching my decision.

### Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

The parties entered into an oral agreement to commence this tenancy in February 2013. Although no written tenancy agreement was established, the parties agreed that the current monthly rent is set at \$850.00. While monthly rent is due on the first, the parties agreed that the landlord has been flexible in when the tenants may pay their monthly rent. The landlord said that monthly rent is often paid by the 8th or 10th of the month, and his mother has had no issue with these payments after the first of the month.

The landlord issued the 2 Month Notice seeking an end to this tenancy by July 31, 2018 for the following reason stated on that Notice:

- *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 landlord's son confirmed that he is the family member who is planning to occupy the rental unit so that he can continue his studies as a way of preparing for medical school.

The tenants applied to cancel the 2 Month Notice because they questioned the landlord's good faith in requiring this rental unit for the purpose stated in the 2 Month Notice. They did so as a result of a number of emails exchanged with the landlord's son shortly before the 2 Month Notice was issued.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on October 31, 2018, by which time the tenants will have surrendered vacant possession of the rental unit to the landlord.
2. Both parties agreed that this tenancy ends by way of the 2 Month Notice issued to the tenants on May 15, 2018.
3. The landlord agreed that the tenants are not responsible for paying any rent for the month of October 2018 in order to comply with the provisions of section 51(1) of the *Act*.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenants' application and that they did so of their own free will and without any element of force or coercion.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenants do not vacate the rental premises in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This tenancy ends on October 31, 2018, on the basis of the 2 Month Notice issued on May 15, 2018, and in accordance with sections 51 and 55 of the *Act*.

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 06, 2018

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Residential Tenancy Branch