



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, DRI, ERP, MNRT, FFT

### Introduction

On October 4, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) dated September 18, 2018, to dispute a rent increase, for a monetary order to recover the cost of emergency repairs, for an order for the Landlord to make emergency repairs to the rental unit, and to recover the filing fee for their application. The matter was set for a conference call.

The Landlord and his Agent (the “Landlord”) as well as the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenants' request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I would be severing all matters not directly related to the Notice to end the tenancy with leave to reapply. The Tenants claims for a monetary order to recover the cost of emergency repairs, and for an order for the Landlord to make emergency repairs to the rental unit, have been severed from these proceedings as they are unrelated to the Notice to end tenancy.

I will proceed with this hearing on the Tenants' claim to cancel the Notice, to dispute a rent increase, and to recover the filing fee for this hearing.

### Issues to be Decided

- Should the Notice dated September 18, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Did the Landlord issue an illegal rent increase?
- Are the Tenants entitled to the return of their filing fee?

### Background and Evidence

Both parties agreed that the tenancy began on October 1, 2017, as a month to month tenancy. The parties also agreed the rent was \$1,200.00 a month to be paid by the first of day of the month and that there was no formal tenancy agreement signed. The Tenants testified that they paid a \$600.00 security deposit for this tenancy; however, the Landlord testified that no security deposit was paid for this tenancy.

All parties also agreed that the Notice was served on September 18, 2018, by registered mail. The Notice indicated that the Tenants were required to vacate the rental unit on November 30, 2018. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that his out of town employment was ending as of November 20, 2018, and that he would be moving back into his home.

The Tenants testified that the Landlord had attempted to increase the rent by \$300.00 and that when they refused the Landlord issued the Notice to end tenancy. The Tenants submitted a copy of the new rental agreement that the Landlord had given them to sign into documentary evidence.

The Landlord testified that the rent he is collecting on the rental unit is less than his expenses for the unit. The Landlord testified that now that his employment has ended his only way to afford to maintain the property is to move back in himself. The Landlord testified that he had issued the Notice in good faith and that he will be using the property himself.

### Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 49 of the Act states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. In this case, I find the Tenants did dispute the Notice within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

*Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an*

*unconscionable advantage. 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 the Tenancy.*

*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 they do not have an ulterior motive for ending the tenancy.*

I have reviewed all of the documentary evidence before me, and I find there is insufficient evidence to show that the Landlord had issued the Notice with ulterior motives. Therefore, I must accept it on good faith that the Landlord is going to use the rental property for the stated purpose on the Notice. Consequently, I dismiss the Tenant's application to cancel the Notice issued on September 18, 2018.

Pursuant to section 55 of the Act, if a tenant's application is dismissed and the Notice complies with Section 52, I am required to grant the landlord an order of possession to the rental unit.

I have reviewed the Notice, and I find the Notice dated September 18, 2018, is valid and enforceable. Therefore, I find that the Landlord is entitled to an order of possession, effective not later than 1:00 p.m. on November 30, 2018.

In regard to the Tenants claim to dispute rent increases, I accept the testimony of the Tenants that the Landlord had not issued a rent increase but that he had attempted to renegotiate the tenancy agreement with them. I find that there is no evidence before me to show that the Landlord had issued rent increases during this tenancy. Therefore, I dismiss the Tenants claim to dispute a rent increase.

As the Tenants have not been successful in their application to cancel the notice, I find the Tenants are not entitled to recover the filing fee for this hearing.

Conclusion

I dismiss the Tenants' application to cancel the Notice dated September 18, 2018.

I dismiss the Tenants' application to dispute a rent increase.

I grant an Order of Possession to the Landlord effective not later than 1:00 p.m. on November 30, 2018. The Tenants must be served with this Order. 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 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: November 15, 2018

---

Residential Tenancy Branch