



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPT, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 25, 2018 ("2 Month Notice"), and to recover the cost of their filing fee.

Both the Landlord and the two Tenants attended the teleconference hearing and provided testimony. All Parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions. The Tenants confirmed receipt of the Landlord's documentary evidence; the Tenants did not submit documentary evidence, other than a copy of the 2 Month Notice.

I 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 and Procedural Matter(s)

The Parties confirmed their email addresses at the outset of the hearing, as well as their understanding that the decision would be emailed to both Parties.

### Issue(s) to be Decided

- Should the 2 Month Notice be cancelled?
- Is the Landlord entitled to an order of possession based on the 2 Month Notice?
- Are the Tenants entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

Neither Party provided a copy of the written tenancy agreement between the Parties; however, based on the testimony of the Parties, I understand that a fixed term tenancy began on November 1, 2013, and that tenancy was renewed every year, until 2018. The Landlord declined to offer the Tenants another one-year tenancy agreement this

year; rather, on October 29, 2018, the Landlord served the Tenants with the 2 Month Notice dated October 25, 2018. I find this changes the tenancy to a month to month basis. I relied on the testimony of both Parties in making this finding.

There is no dispute that the respective documents and notices were served on each Party by the other within the required time limits. The effective vacancy date set out on the 2 Month Notice is December 31, 2018.

The Landlord's reason for issuing the 2 Month Notice is set out on page two of this document:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (parent, spouse, or child; or the parent or child of that individual's spouse).

The Tenants' evidence is that they dispute the 2 Month Notice, because they do not believe the Landlord issued it in good faith -- that Landlord will not be using the rental unit for immediate family, as required by section 49 of the *Act*.

The Tenants said they have bought a property, but cannot move into it until the end of January 2019; the evidence before me indicates that prior to the hearing, the Tenants requested an extension of the vacancy deadline by a month. The Landlord rejected the Tenants' request in this regard.

The Landlord provided detailed written evidence, which indicates that the Parties' relationship has been acrimonious for a number of months (per the Landlord's document entitled "SubmissionsandIndex(4)"). Further, in the Tenants' Notice of Dispute Resolution Proceeding that was served on the Landlord, the Tenants said:

We do not believe that the landlord will be using the property for immediate family. We have been harassed before (see previously withdrawn dispute, settled by the intervention of a 3<sup>rd</sup> party) and are again feeling intimidated. Lawyers, a Commissionaire serving us notice, kicking us out on New Year's Eve? We acknowledge that the landlord no longer wishes us to live on the premises. However, we feel that we are being railroaded. We would like more time to find alternate accommodations.

The Landlord stated in the hearing and in her documentary evidence:

My son and his family arrived in Canada November 12, 2018. He has two daughters, aged 16 and 12, both of which are now enrolled/attending in schools in Esquimalt. The parents are currently having to transport both girls to and from their schools each day. Having them live outside of their school catchment area longer than is necessary puts added stress onto their smooth transition into the Canadian educational program.

...

My son has worldly goods en route via shipping container. The container is expected to land in Vancouver Dec. 24, 2018. We would not appreciate having it remain in Vancouver, at additional storage costs longer than is necessary.

The Landlord also submitted the following documents in her evidentiary materials, which she identified as:

- Birth certificate for my son
- Flight tickets for my son and family
- Laybill for worldly goods
- Short term rental receipt
- Letter from Robert Graham.

The Landlord did not identify her son or his immediate family members in any of these documents. The Landlord said she redacted her son's name in the documents for privacy reasons related to the employment that her son seeks.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

When a Tenant disputes a 2 Month Notice, the onus of proof reverts to the Landlord to prove that the 2 Month Notice is valid and should be upheld. If the Landlord fails to prove the 2 Month Notice as valid, the Notice will be cancelled.

Where one Party provides a version of events in one way and the other Party provides an equally probable version of events, the Party with the burden of proof has not met the onus to prove their claim, and the claim fails. Further, when a Tenant files to cancel a 2 Month Notice for Landlord's Use of Property and questions the Landlord's "good faith" requirement, the onus lies on the Landlord to prove on a balance of probabilities that the 2 Month Notice was issued with an honest intention, and with no ulterior motive

to end the tenancy. This is consistent with section 49 of the *Act* and Residential Policy Guideline 2: “Ending a Tenancy: Landlord’s Use of Property”.

I have carefully considered all the evidence and testimony before me and I agree with the Tenants that the 2 Month Notice was issued with an ulterior motive to end the tenancy and lacked an honest intention. The Landlord modified official documents to hide the identity of the person(s) she says are moving into the rental unit. In addition, the Landlord did not call her son or her lawyer, Robert Graham, as witnesses in the hearing. These factors, along with the evident discord between the Parties, as set out in their written submissions, raise questions in mind about the Landlord’s sincerity of purpose in issuing the 2 Month Notice. Accordingly, I cancel the 2 Month Notice dated October 25, 2018, as I find there is insufficient evidence that it was served in good faith.

I order the tenancy to continue until ended in accordance with the *Act*. I also grant the filing fee to the Tenants, pursuant to section 72 of the *Act*, as they were successful in their Application considered in this decision. I order that the Tenants may reduce their January 2019 rent by \$100.00 in full satisfaction of the recovery of the filing fee pursuant to section 72 of the *Act*.

### Conclusion

The Tenants’ Application is successful. The 2 Month notice is cancelled. The tenancy continues until ended in accordance with the *Act*.

This decision will be emailed to both parties, as indicated above.

This decision is final and binding on the Parties, unless otherwise provided under the *Act*, and 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: December 19, 2018

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Residential Tenancy Branch