



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL LRE OLC RP FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 14, 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 Landlords' Use of Property, dated October 31, 2018 (the "Two Month Notice");
- an order suspending or setting conditions on the Landlords' right to enter the rental unit;
- an order that the Landlords comply with the *Act*, regulation, and/or the tenancy agreement;
- an order that the Landlords make repairs to the unit, site, or property; and
- an order granting recovery of the filing fee.

The Tenants were represented at the hearing by T.A. The Landlords attended the hearing and were assisted in translation by G.A., their daughter. Also attending as a witness for the Landlords was K.L., their daughter. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, T.A. testified the Application package was served on the Landlords in person. G.A. acknowledged receipt on behalf of the Landlords. In addition, T.A. testified a subsequent documentary evidence package, submitted to the Residential Tenancy branch on December 6, 2018, was served on the Landlords by posting a copy at the Landlords' door. G.A. acknowledged receipt on behalf of the Landlords. No issues were raised during the hearing with respect to service and receipt of these documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Tenants also submitted a documentary evidence package to the Residential Tenancy Branch on December 13, 2018. However, during the hearing, T.A. testified it was not served on the Landlords, and the Landlords denied receipt. This documentary evidence was not served in accordance with the *Act* and the Rules of Procedure, and has been excluded from consideration.

In addition, the Landlords submitted a documentary evidence package to the Residential Tenancy Branch on December 11, 2018. On behalf of the Tenants, T.A. acknowledged receipt of this documentary evidence. No issues were raised during the hearing with respect to service and receipt of this evidence. Accordingly, pursuant to section 71 of the *Act*, I find the Landlords' documentary evidence was sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present their evidence orally and in written and documentary form, and make submissions. 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 and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, during the hearing, the parties were advised that I would be exercising my discretion to dismiss all but the Tenants' request for an order cancelling the Two Month Notice and to recover the filing fee, with leave to reapply. However, in light of my findings below, the Tenants' Application is dismissed, without leave to reapply.

#### Issues to be Decided

1. Are the Tenants entitled to an order cancelling the Two Month Notice?
2. Are the Tenants entitled to recover the filing fee?

### Background and Evidence

The parties confirmed the tenancy began on April 1, 2016. Rent in the amount of \$1,600.00 per month is due on the first day of each month. The parties agreed the Tenants paid a security deposit of \$800.00, which the Landlords hold.

The Landlords wish to end the tenancy. Accordingly, they issued the Two Month Notice on the basis that the rental unit will be occupied by the Landlords, or the Landlords' close family member. The Application confirms receipt of the Two Month Notice on October 31, 2018.

In support of the Two Month Notice, G.A. testified that her sister, K.L., would be moving into the rental unit. K.L. was available and provided affirmed testimony that she intends to move into the rental unit when it is vacant. She testified the rental unit is closer to public transportation, which will make it more convenient to get to work.

In reply, T.A. testified that the Landlords told him they intended to complete a \$20,000.00 renovation, and wanted to raise rent. He also referred to comparable rents in the neighbourhood. Although asked to provide documentary evidence in support of his claims, T.A. testified that the Landlords' requests were verbal only.

On behalf of the Landlords, G.A. denied the Landlords intend to do any renovations, and confirmed the Landlords have not raised rent since the tenancy began.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 49 of the *Act* permits a landlord to take steps to end a tenancy for landlord's use of property in the circumstances described therein. In this case, the Landlords issued the Two Month Notice on the basis that the rental unit will be occupied by the Landlords or the Landlords' close family member. Specifically, on behalf of the Landlords, G.A. testified that her sister, K.L., will occupy the rental unit.

I find there is insufficient evidence before me to conclude the Landlords do not intend to do what was indicated on the Two Month Notice. K.L. attended the hearing and provided affirmed testimony, including the reasons she will be moving into the rental unit. Although T.A. testified to verbal conversations with the Landlords about renovation and rent, I was not referred to any documentary evidence that would lead me to question the intentions of the Landlords. In addition, G.A. denied the Tenants' allegations on behalf of the Landlords. Accordingly, I find the Tenants' Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55(1) of the *Act* requires that I grant an order of possession in favour of the Landlord. In this case, I have reviewed the Two Month Notice and find that it complies with section 52 of the *Act*. Accordingly, I grant the Landlords an order of possession, which will be effective on December 31, 2018, at 1:00 p.m.

### Conclusion

I order that the Two Month Notice is upheld. The Tenants' Application is dismissed, without leave to reapply. The Landlords are granted an order of possession, which will be effective on December 31, 2018, at 1:00 p.m. The order 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: December 21, 2018

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Residential Tenancy Branch