



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL OLC FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on January 28, 2019. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties were present at the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Both parties confirmed receipt of each other's evidence, and the Landlord confirmed receipt of the Tenant's application and Notice of Hearing.

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

### Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the Tenants' application, with leave to reapply, with the exception of the following claim:

- to cancel the 2-Month Notice to End Tenancy for Landlord's Use of the Property (the Notice).

#### Issues(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The Tenants acknowledged receiving the Notice on November 26, 2018. The Landlord issued the Notice for the following reason:

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

In the hearing, the Landlord was asked to explain why the Notice was issued, and she began by stating that she is trying to sell the house, and listed it for sale in October 2018. The Landlord stated that it has been difficult to deal with the Tenants to get pictures taken, and to show the rental unit in an attempt to sell it. The Landlord stated that the house is still listed, and her realtor, who was also present at the hearing confirmed this. The Landlord stated that it would be much easier to sell the house if the Tenants were not in the rental unit. The Landlord further stated that she wants her mother, her two sisters, and her brother to move into the rental unit. The Landlord stated that they are coming from Africa in February, and she needs a place for them to stay. The Landlord stated that her family members would live in the rental unit while it is being sold, and then she will use the money to buy a different place for her family to live in. The Landlord feels the Tenant is interfering with her plans to sell the property.

The Tenants stated that they were initially going to sign another fixed term tenancy agreement with the Landlord but they did not come to an agreement as to how much it

should be. The Tenants stated that the Landlord is now looking for excuses to end the tenancy. The Tenants stated that the Landlord also tried to evict them with a 1-Month Notice, last spring (2018). The Tenants feel the Landlord is not acting in good faith and just wants them out for more money.

### Analysis

Based on the evidence and testimony before me, I make the following findings:

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that they intend in good faith to occupy the unit (as she has indicated on her 2-Month Notice).

I acknowledge that there has been degradation in the relationship between the Landlord and the Tenants. The Tenants' are alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because their relationship has soured.

The burden of proof rests with the Landlord to demonstrate that she, in good faith intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2 states the following:

*If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.*

I have considered the testimony and the evidence on this matter, in totality, and I note that the Landlord, when asked to explain why the 2-Month Notice was issued, immediately started explaining her frustration with the Tenants impeding her ability to sell the house. The Landlord's realtor was also present and confirmed that the house is actively for sale. I note that the Landlord also, later in the hearing, brought up that her mother, two sisters, and her brother will be moving in while the house sells. I note the Landlord's family members are flying in from out-of-country in February. However, I also note she has not provided any evidence to support that her family is coming from out of town, such as immigration documentation, or flight details etc.

After considering this matter, I note there is a history of disputes and Notices between the Landlord and the Tenants. I do not find the Landlord has provided sufficient

evidence and testimony to establish her good faith intent, and that she, or close family member (*parent, spouse or child; or the parent or child of that individual's spouse*) will be moving in. Also, it appears the Landlords primary motive is to sell the house, rather than have her family member move in, as laid out on the 2-Month Notice.

In this case, the onus is on the Landlord to substantiate the Notice and importantly, her good faith intentions. I find that the Landlord has not provided sufficient evidence to support her good faith intentions, especially given she is actively trying to sell the rental unit, which is not the ground she identified on the 2-Month Notice as the reason to end the tenancy. Therefore, the Tenants' application is successful and the Notice received by the Tenant on November 26, 2018, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenants were successful with their application, I grant them the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

### Conclusion

The Tenants' application is successful. The Notice is cancelled.

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: January 30, 2019

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Residential Tenancy Branch