



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNL ERP LRE OLC RP

### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlords confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenants confirmed receipt of the 2 Month Notice dated December 12, 2018, which was served to them by way of registered mail, I find the tenants deemed served with the 2 Month Notice on December 17, 2018, 5 days after mailing pursuant to sections 88 and 90 of the *Act*.

### **Issues to be Decided**

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlords to make repairs to the rental unit?

Are the tenants entitled to an order to suspend or set conditions on the landlords' right to enter the rental unit?

### **Background and Evidence**

This month-to-month tenancy began on September 1, 2017 when the tenants moved into the trailer in a manufactured home park. The landlords rent out both the pad and trailer to the tenants for \$650.00 per month, payable on the first of the month. The tenants continue to reside in the trailer, and are applying to cancel the 2 Month Notice issued to them by the landlords.

The landlords issued the 2 Month Notice, with an effective move-out date of February 28, 2018 for the following reason:

- 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 landlords testified in the hearing that they currently reside in a basement suite in another province, but want to move back as they are 60 years old, and it is much too cold where they currently reside.

The tenants testified that he did not believe that the landlords served this second 2 Month Notice in good faith, and that the main reason why the landlords served them with the 2 Month Notice was due to the disputes between both parties. The tenants testified that their son rents a trailer in the same manufactured home park from the same landlords, and there was an altercation between their son and the landlords. The tenants testified that their son was moving out pursuant to a 4 Month Notice issued to him by the landlords.

The landlords admit that an incident took place, but dispute the fact that this was the primary reason why they had issued the 2 Month Notice. The landlords testified that they had the right as homeowners to move back into their trailer.

The tenants are also requesting repairs be done to the trailer. The tenants submitted photos in support of their testimony that the leaking roof has caused the trailer to deteriorate, and that the floors were caving in. The tenants also requested that the landlords perform maintenance as required by the *Act*. The tenants submitted requests they made to the landlord in the form of text messages.

The tenants also asked for a peace bond and order for the landlord to stay 50 feet away from them.

### **Analysis**

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlords testified that they wished to move back into their trailer.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

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

Although the landlords stated that they had issued the 2 Month Notice in order to move into the trailer, I find that the tenants had raised doubt as to the true intent of the landlords in issuing this notice. The tenants gave undisputed sworn testimony that the relationship between both parties have deteriorated after an incident took place between the son and the landlords. Furthermore, the tenants testified that their son will be vacating his trailer pursuant to a 4 Month Notice issued to him by the landlords. The landlords did not provide a reason for why they could not move into the soon-to-be vacant trailer as an alternative. As the tenants raised doubt as to the landlords' true

intentions, the burden shifts to the landlords to establish that they do not have any other purpose to ending this tenancy.

I find that the landlords have not met their burden of proof to show that they issued the 2 Month Notice in good faith. I find that the testimony of both parties during the hearing raised questions about the landlords' good faith. The landlords testified that they wished to move to the province due to the cold where they currently reside, but did not provide an explanation why alternative accommodation could not be considered rather than ending this tenancy. I find that the deteriorating nature of the relationship between both parties is a very likely reason why the landlords want to end this tenancy. In coming to this determination, I find that the landlords have not provided sufficient evidence to support that they would be moving back, and that there are no alternatives other than to end this specific tenancy.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the landlords, in good faith, require the tenants to vacate this specific trailer in order for them to occupy it.

Accordingly, I allow the tenants' application to cancel the 2 Month Notice. The landlords' 2 Month Notice, dated December 12, 2018, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenants requested a Peace Bond, but a Peace Bond is an order that can only be made pursuant to the *Criminal Code of Canada*. As I do not have the jurisdiction to make this Order, I dismiss this portion of the tenants' application without leave to reapply.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

### **Landlord and tenant obligations to repair and maintain**

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 33 of the *Act* states the following in regards to emergency repairs:

### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system...
  - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, a leaking roof may be considered emergency repairs. Section 33(3) outlines the steps the tenants must make, including “at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs”.

I have considered the sworn testimony of both parties as well as the documentation provided for this hearing. I find that the tenants did not provide sufficient evidence to support that they followed the steps required by section 33 of the *Act* for emergency repairs. On this basis, I dismiss the tenants’ application for emergency repairs with leave to reapply.

Although the tenants submitted requests to the landlord for repairs by way of text message, I am not satisfied that these text messages were received by the landlord. Accordingly, I dismiss the tenants’ application for repairs with leave to reapply. I do,

however, remind the landlords of their duties and responsibilities to repair and maintain the property as stated above.

**Conclusion**

The tenants' application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated December 12, 2018, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the tenants' request for a Peace Bond without leave to reapply, as this is not an Order that can be made under the *Residential Tenancy Act*.

I dismiss the remainder of the tenants' application with leave to reapply.

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: February 6, 2019

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Residential Tenancy Branch