



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, ERP, RP, RR, PSF, MNDCT, MNRT, OLC, FFT

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord, the landlord's legal counsel (counsel) and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant A.P. (the tenant) indicated that they would be the primary speaker during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

Counsel acknowledged receipt of the Application which was served to them on January 15, 2019, as an agent of the landlord. In accordance with section 89 of the *Act*, I find that the landlord is duly served with the Application.

Counsel also acknowledged receipt of an Amendment to the Application for Dispute Resolution (the Amendment) and the tenants' evidence which was served to them on January 23, 2019, as an agent of the landlord. In accordance with section 88 of the *Act*, I find that the landlord is duly served with the Amendment and the tenants' evidence.

The tenant acknowledged receipt of the landlord's evidence which was served to them by e-mail on February 01, 2019, as per an agreement with counsel. Although not served in accordance with section 88 of the *Act*, I find the tenants are duly served with the evidence pursuant to section 71 (c) of the *Act*, which allows an Arbitrator to find documents sufficiently served for the purposes of the *Act*.

The tenant confirmed that they received the Two Month Notice on December 31, 2018. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the Two Month Notice on December 31, 2018.

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Two Month Notice, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

#### Issue(s) to be Decided

Should the Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

Written evidence was provided that this tenancy commenced on September 01, 2017. The tenant testified that the current monthly rent is \$2,000.00, due on the first day of each month. Both parties agreed that a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$1,000.00 were paid to the landlord and which the landlord currently retains.

A copy of the landlord's signed December 28, 2018, Two Month Notice was entered into evidence. In the Two Month Notice, requiring the tenants to end this tenancy by February 28, 2019, the landlord cited 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).*

The tenants entered into written evidence:

- A copy of a written submission from the tenants in which it states that the landlord never provided a copy of their tenancy agreement after the tenants had signed it, until receiving the evidence for this hearing. The submission also states that the landlord had notified them by e-mail and verbally, when staying in the basement suite in July 2018 for 10 days, of their intention to sell the house and that the tenants must vacate the rental unit at the end of the lease in August 2018;
- A copy of a text message in which the landlord confirms an e-mail sent to advise the tenants of his intention to sell the house;
- A copy of an e-mail from the landlord to the tenants dated July 03, 2018, in which the landlord advises the tenants that they do not wish to continue leasing the rental unit to them and that they have decided to sell the rental unit to reduce their stress. The landlord states that they intend to move into the rental unit to manage the completion of all the work needed and then put the house up for sale;
- A copy of a letter from the tenants to the landlord dated August 04, 2018, expressing concern over the request for the tenants to vacate the rental unit without proper notice as the lease is now month to month and further listing all deficiencies with maintenance of the rental unit which have not been addressed; and
- A letter from the tenant to the landlord's legal counsel dated January 03, 2019, regarding the history of the tenancy with the tenants renting the upstairs unit and the landlord retaining the basement suite to supervise ongoing renovations. The submission further states that the landlord has not served the Two Month Notice

in good faith as their primary intention is not to occupy the rental unit but to sell the house. The tenants maintain that the landlord could do repairs to prepare for the sale with the tenants remaining in the unit. The letter also states that the landlord has not fulfilled their obligations under the Act with maintenance of the house and other items.

The landlord submitted into evidence

- A copy of a written submission which states that the landlord contemplated selling the rental unit but never actually put it up for sale and intends to reside in the rental unit indefinitely from time to time to monitor future renovations as a result of their desire to live in Victoria. The submission states that the landlord did repairs during their visit to the rental unit in July 2018 when they stayed in the basement suite;
- A copy of a letter from counsel to the tenants confirming service of the Two Month Notice and requesting the tenants submit repayment of unauthorized deductions from the rent for November 2018; and
- Copies of pictures of the rental unit before and after the renovations have been completed.

The landlord submitted that they intend to move into the rental unit for an indefinite period of time to do renovations and then eventually they might sell the house a few years down the road. The landlord stated that they have now retired and that it is their intention to retire in Victoria with their wife. The landlord confirmed that they have had health issues, which have been exasperated by the tenants and the situation with the tenancy, but that his health is improving.

The tenant submitted that the landlord had informed them that their wife had no intention to move to Victoria and that they believe that the landlord has issued the Two Month Notice to them in bad faith. The tenant referred to the landlord's submission that they will only occupy the rental unit from time to time to supervise repairs. The tenant stated that the rental unit is already renovated and only repairs are required for the deck and garage doors which the landlord is able to supervise when they stay at the basement suite. The tenant stated that the landlord is not able to live in Canada full time due to not having landed immigrant status and that the landlord advised them that their partner has no intention of moving to the rental unit.

The landlord responded that they can live in Canada for half of a year and that the basement suite is not suitable to reside in for the amount of time the landlord intends on staying in the premises.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit.

Section 49 of the *Act* provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notices were issued to the tenant in good faith and truly intends on doing what they said they would do on the Two Month Notice. As the tenant disputed this notice on January 15, 2019, and since I have found that the Two Month Notice was served to the tenants on December 31, 2018, I find that the tenants have applied to dispute the Two Month Notice within the time frame provided by section 49 of the *Act*.

RTB Policy Guideline #2 establishes that good faith is a legal concept and means that a party is acting honestly when doing what they say they are going to do or what they are required to do under the legislation or tenancy agreement. The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the landlord has failed to provide any documentary evidence to corroborate their submission that the rental unit is going to be occupied by the landlord. Although the landlord has provided a written statement from their legal counsel which indicates their intention, I find that there is no other actual written evidence which supports the landlord's intent such as a statement from his wife or other tangible evidence to confirm the landlord and his partner's intentions to move.

Having reviewed the evidence and affirmed testimony, I find that the landlord indicated in writing their intentions to sell the home in July 2018 and requested the tenants to move at that time due to health reasons, in addition to the stress that the rental unit was causing the landlord, after consulting with their partner. I find that there is no indication in the e-mails provided to the tenants in July 2018 that the landlord intends occupying the rental unit with their wife. I find that the landlord's own submission from counsel only states that they will be living in the unit "from time to time" to prepare the rental unit for sale and, from the landlord's own testimony, it is clear that their priority is to sell the rental unit. I find that, as there is no evidence that the landlord's wife intends to move to the municipality where the rental unit is located, it is not clear as to what has changed in the landlord's circumstances that requires them to have the full rental unit as opposed to the basement suite that they have already been using to carry out renovations from time to time.

Based on a balance of probabilities, I find that the landlord does not intend on buying another house to retire in the municipality as it is clear that the landlord cannot live full time in Canada, from their own testimony, and that the landlord has already expressed to the tenants in writing of their and their partner's intent to reduce their stress by selling the rental unit, which would not lead one to believe that they would buy another home which they would possibly have to rent out for half of the year. If the landlord's intent is to occupy the rental unit from time to time, for the purpose of selling the rental unit, they do not require it to be vacant for that purpose as it is clear that the landlord is able to use the basement suite and there is no evidence that his partner intends to move to the rental unit. If the buyers intend on occupying the rental unit, the landlord can provide proper notice to end the tenancy at that time.

In addition to the above, I find that the landlord has submitted in one of their letters to the tenants that there is unpaid rent for November 2018 and that the landlord has not accepted the rent for December 2018 as a result. The counsel's submission also refers to the landlord having to address numerous requests for repairs and complaints from the tenants which supports the tenants' testimony that that the landlord may have ulterior motives for ending the tenancy that negate their honest intent. I find that the landlord confirmed in their testimony that this tenancy is causing him a lot of stress due to the demands of the tenants among other issues.

For the above reasons, I find that the landlord has not issued the December 28, 2018, Two Month Notice to the tenants in good faith and I find that the landlord may have ulterior motives for seeking to end the tenancy.

Therefore, the Two Month Notice dated December 28, 2018, is set aside and this tenancy will continue until ended in accordance with the *Act*. As the tenants have been successful in this application, I allow them to recover their filing fee from the landlord.

### Conclusion

The tenants are successful in their Application. The Two Month Notice dated December 28, 2018, is cancelled and of no force or effect.

This tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I order that the tenants may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$100.00, to recover the filing fee for this application.

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 11, 2019

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Residential Tenancy Branch