



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) and for the recovery of the filing fee paid for this application.

Both Tenants were present for the teleconference hearing. Both Landlords were also present, along with legal counsel (collectively the “Landlords”). The Landlords’ son joined during the hearing as a witness.

The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Tenants confirmed receipt of a copy of the Landlords’ evidence. Neither party brought up any concerns regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

### Issues to be Decided

Should the Two Month Notice to End Tenancy for Landlord’s Use of Property be cancelled?

If the Two Month Notice to End Tenancy for Landlord’s Use of Property is upheld, are the Landlords entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on November 1, 2017. Monthly rent in the amount of \$1,300.00 is due on the first day of each month. A security deposit of \$650.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties.

The Landlords provided testimony that a Two Month Notice was served to the Tenants in person on December 21, 2018. The Two Month Notice, dated December 21, 2018 was submitted into evidence and states the following as the reason for ending the tenancy:

- 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 effective end of tenancy date of the Two Month Notice was stated as February 28, 2019. The Landlords provided further testimony that they require possession of the lower level rental unit so that their son can move in. They stated that their son has returned to BC and is currently living in a fifth-wheel trailer on their property. They noted that the trailer is broken and does not have amenities such as running water or heat. They further stated that their son has a job nearby and has also registered for a program at the local university.

The Landlords submitted that they have three separate units on their property, which includes an upper level rental unit, the lower level unit currently occupied by the Tenants and a mobile home which their other son currently lives in.

They stated that they rent the upper level unit to a woman employed as a stable hand on their farm and stated that she moved into this unit on September 21, 2018. The Landlords submitted into evidence the agreement between the barn manager and the upstairs tenant stating that she will rent the unit during the time she is employed, as well

as a letter from her dated February 1, 2019 stating that she began fulltime work on September 21, 2018. In the letter, she also states that she is aware that the Landlords' son resides in a trailer on the property and has plans to move into the lower level unit.

The Landlords testified that as their son intends to stay residing in the area for work and school, he needs a more permanent place to live which is why he will be moving into the lower level rental unit. The Landlords also notes that their son requires room for his daughter and his large dog.

The Tenants confirmed that they received the Two Month Notice on or around December 21, 2018. They stated that they were previously issued a Two Month Notice on June 30, 2018 which was cancelled through a dispute resolution decision dated September 5, 2018. This previous decision was submitted as evidence.

The Tenants stated that the previous Two Month Notice was found to not have been issued in good faith due in part due to an illegal rent increase which the Tenants did not accept. They stated that they were served with the Two Month Notice the day after they advised the Landlords that they were not in agreement with the illegal rent increase.

The Tenants submitted that the Landlords have presented a similar narrative this time as to when the first Two Month Notice was issued. They stated their belief that the Landlords are not acting in good faith and questioned why the Landlords' son cannot move in with them temporarily or why he could not have lived in the upper level rental unit which was unoccupied for a period of time.

The Landlords responded that they do not have room in their home, along with their son needing space for his daughter and his dog which one of the Landlords is allergic to. The Landlords also noted that they do not want a dog in the upper level unit, as well as the fact that the upper level unit is required for their stable hand who has been residing there since September 2018. The Landlords stated that the upper unit was occupied by their son temporarily, and then it was empty for a time after which their stable hand moved in.

The Landlords' son attended the hearing as a witness and provided affirmed testimony that he has plans to move into the lower level rental unit. He stated that since December 3, 2018 he has been living in a fifth-wheel trailer on the property and that the trailer has no running water, no sewer system, no washer and dryer and in which the propane does not work. The witness stated that he has work in BC now and intends to stay here

long-term. He also noted that he applied for a program at the nearby university and while he was not accepted, he has plans to continue working and apply again in September 2019. Included in the Landlords' evidence package was school information for their son dated December 12, 2018 showing that he is currently waitlisted.

The witness stated that he is not able to reside with his parents due to his mother's allergies to his dog and also that he needs a long-term place to stay. He stated that he is not able to live in the upper rental unit as it is a one-bedroom unit which is currently occupied. The Landlords' son also submitted two letters, dated December 6, 2018 and February 1, 2019 which state his plans to move into the lower level rental unit in order to work in the area and attend school.

The Landlords submitted a letter dated January 25, 2019 from their other son who resides on the property. In the letter he states that his brother is residing in a fifth-wheel trailer that is not suitable to live in, that the stable hand resides in the upper level unit, and that his brother has plans to stay in the area and move into the lower level unit.

The Tenants submitted evidence from their previous dispute resolution proceeding in September 2018 as well as evidence regarding the current Two Month Notice. This included a letter to legal counsel for the Landlord dated January 9, 2019 which they sent with a copy of their evidence.

The Tenants also included a copy of the previous Two Month Notice, the decision dated September 5, 2018, and communication regarding the illegal rent increase noted by the Tenants. This included the letter dated June 11, 2018 in which the Landlords advise the Tenants that rent will increase to \$1,500.00, and the Tenants' response letter dated June 29, 2018. In the Tenants' response, they notify the Landlord regarding the legal process for rent increases and decline to pay the proposed increase amount. The Tenants also submitted the Landlords' response on June 30, 2018 in which the Landlords state that rent will be remaining the same.

The parties were offered the opportunity to settle the dispute but were not able to come to an agreement.

## Analysis

The Two Month Notice was served to the Tenants on December 21, 2018 pursuant to Section 49(3) of the *Act* stating that the Landlords or a close family member would be occupying the rental unit.

As stated in Section 49(8)(a) of the *Act*, a tenant has 15 days in which to dispute a Two Month Notice issued for landlord's use of the property. As the Tenants filed an Application for Dispute Resolution on January 3, 2019, I find that they applied within the timeframe allowable under the *Act*. Therefore, the matter before me is whether the reasons for the Two Month Notice are valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The Tenants questioned the good faith intentions of the Landlords in issuing the Two Month Notice. *Residential Tenancy Policy Guideline 2: Landlord's Use of Property* provides the following definition of 'good faith':

*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 are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.*

This Policy Guideline further states that acting in good faith means establishing that there is no ulterior motive. The Landlord stated that their son intends to move into the rental unit and provided a letter from their son, as well as had their son attend the hearing as a witness. Their son provided affirmed testimony that he intends to reside in the rental unit. The Landlords also submitted letters from their other son and the tenant in the upper level rental unit, both of which state their knowledge of the son's plans to move into the lower level rental unit.

While I accept that a previous Two Month Notice was found to not have been issued in good faith, six months have passed before the second Two Month Notice was issued. I find it reasonable that situations and plans may have changed within this timeframe and that the Landlord may now have reason to serve a Two Month Notice.

While the Tenants questioned the good faith intentions of the Landlords and noted an illegal rent increase that was provided in June 2018, I accept the evidence that shows that the Landlords cancelled that rent increase on June 30, 2018 and that rent has remained the same throughout the tenancy.

A previous illegal rent increase notice may have been cause to question the previous Two Month Notice given the close timeframe in which the increase was not accepted by the Tenants and that the first Two Month Notice was served. However, I do not find that the previous rent increase that was declined by the Tenants on June 29, 2018 necessarily indicates that this Two Month Notice was also not issued in good faith.

I accept the evidence and affirmed testimony of the Landlord's son who stated his intent to move into the rental unit. I also do not find sufficient evidence before me to establish that the Landlords have an ulterior motive for issuing the current Two Month Notice.

While the Tenants questioned why the Landlords' son was not living with them or moving into the upstairs unit, the Landlords provided testimony as to why their son plans to move into the lower level unit which was confirmed by their son. As stated, good faith means that the parties are acting honestly in their intentions to follow through on the stated purpose of the Two Month Notice. The Landlords stated that their son intends to move into the lower level unit. Therefore, the relevant matter is whether their son plans to move into the lower level unit as that was the reason for the Two Month Notice. The Landlords' son attended the hearing to provide testimony of his intentions which match what was stated by the Landlords as the reason for the Two Month Notice.

As such, I find that the Two Month Notice is valid as I find evidence of the good faith intentions of the Landlords and insufficient evidence to determine an ulterior motive in issuing the notice. The Tenants' application to cancel the notice is dismissed, without leave to reapply.

Upon review of the Two Month Notice, I find that it complies with the form and content requirements of Section 52 of the *Act*. Therefore, in accordance with Section 55(1) of the *Act*, I find that the Landlords are entitled to an Order of Possession. The Landlords are granted an Order of Possession effective on the effective end of tenancy date of the Two Month Notice; February 28, 2019.

As the Tenants were not successful with their application, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective **on February 28, 2019 at 1:00 pm**. This Order must be served on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed 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: February 14, 2019

---

Residential Tenancy Branch