



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, ERP, OLC, PSF, RR, FF

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlords with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlords served the tenants with submitted documentary evidence via Canada Post Registered Mail on February 22, 2019. Neither party raised any service issues. As both parties have attended and confirmed receipt of the above noted documents, I am sufficiently satisfied that both parties have been sufficiently served as per section 90 of the Act.

### Preliminary Issue(s)

At the outset, the tenants' application requests were clarified. The tenants clarified that there is now no emergency repairs, but just repairs to a porch roof that was leaking; a request for the landlord to provide cable as agreed to in a tenancy agreement and the reduction in rent for the loss of cable. Although the tenants stated that these requests were in relation to the landlords' 2 month notice, the tenants failed to provide sufficient details of a relation. As such, I find that the primary issue is the tenants' request to cancel the 2 month notice and dismiss the above noted issues with leave to reapply. Residential Tenancy Branch Rules, 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice?

Are the tenants entitled to recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the landlords served the tenants with the 2 month notice dated January 23, 2019 on January 25, 2019 for landlord's use of property. The 2 month notice provides for an effective end of tenancy date of April 1, 2019 and the reason given as:

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

The tenants claim that the landlord does not intend to have a close family member, "her estranged husband" occupy the rental unit (trailer) as he lives and works in Alberta. The tenants argue that the notice to end tenancy was issued in retaliation for complaints made to the landlord to make repairs to the rental unit.

The landlords dispute this claim stating that the rental unit is owned by B. (landlord's daughter) and financials were administered by G.M. G.M. stated that the property was purchased with the intent for B's parents to "care" for her while living in close proximity. The landlord, K.H. clarified that he and his spouse, L.H. are in the process of divorcing. The main property is a 2 bedroom and office. The landlords stated that as such, it

would be “uncomfortable” for all parties to share the main property. The landlords confirmed that the landlord, K.H. will occupy the trailer to provide respite for the landlord, L.H. in caring for B. on a part time basis, while maintain a short separation between them by occupying the rental unit.

The tenants provided repeated testimony that the landlords are trying to evict them due to fraudulent claims over repairs and disputes.

The landlords further provided testimony that the father, K.H. will provide respite care to his daughter and allow L.H. an opportunity to leave for longer periods of time because of the situation in caring for their child, B. who suffers from severe brain injury and physical limitations due to an accident.

### Analysis

Section 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

Both parties confirmed that the landlords served the tenants with the 2 month notice dated January 23, 2019 and have confirmed the contents of the notice.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

In this case, the tenants claim that the landlords will not in good faith occupy the rental unit and also claimed that the 2 month notice was issued in retaliation to the tenants' complaints for repairs.

The landlords have provided undisputed affirmed testimony that the purpose of the 2 month notice was to provide an alternate living space for K.H. who is separated from L.H. to provide respite care for the daughter, B. I find in this circumstance that although this is a complex family dynamic, that the landlords have provided clear and concise reasons for occupying the rental unit and have provided on a balance of probabilities a valid reason for occupying the rental unit. On this basis, I prefer the evidence of the landlords over that of the tenants' claims of retaliation. The 2 month notice dated January 23, 2019 is upheld. The tenants' application is dismissed. The landlords are granted an order of possession to be effective April 1, 2019.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: March 19, 2019

---

Residential Tenancy Branch