



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0799718 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Tenant:.....CNL FFT LRE

Landlord:.....FFL, MNDCL-S, MNRL-S, OPL, OPR

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants applied:

- To cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated April 30, 2019 to sell the residential property ("Two Month Notice");
- For an order restricting or suspending the Landlord's right to enter; and
- To recover the \$100.00 Application filing fee.

The Landlord applied for:

- An order of possession further to having issued a Two Month Notice;
- An order of possession further to having issued a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice");
- Compensation for monetary loss or other money owed – \$3,000.00 in unpaid rent - holding security or pet deposit;
- Recovery of unpaid rent pursuant to having issued a 10 Day Notice in the amount of \$3,600; and
- Recovery of the \$100.00 Application filing fee.

The Landlord, O.C., and the Tenants, J.V. and S.B., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

As for the exchange of evidence, the Landlord testified that he served his application for dispute resolution and documentary evidence on the Tenants via registered mail. The Landlord provided Canada Post tracking numbers in the hearing for these packages. The Tenants said they did not receive these documents, but they also said they do not go through their mail thoroughly and that the registered mail notices might be there.

The Tenants said they only served the Landlord with their application for dispute resolution, but not the documentary evidence that they uploaded to the Residential Tenancy Branch ("RTB"). I advised the Parties that I would not consider the Tenants' documentary or written evidence, due to administrative fairness -- they had not given the Landlord the opportunity to review this evidence prior to the hearing.

I have reviewed all oral evidence from both Parties and the Landlord's written evidence before me that met the requirements of the RTB Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

At the onset of the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants applied for multiple claims, the most urgent of which are the claims to set aside the Notices to end the tenancy. I find that not all the claims on the Tenants' application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenants' request to set aside the Two Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenants' other claim to suspend or restrict the Landlord's right of entry to the rental unit is dismissed.

#### Issue(s) to be Decided

- Should the Two Month Notice be confirmed or cancelled?
- Should the 10 Day Notice be confirmed or cancelled?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the \$100.00 application filing fee?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on February 1, 2019, with a monthly rent of \$3,500.00, due on the first day of each month. The Parties agreed that the Landlord reduced the rent to \$3,000.00 per month, starting in March 2019, although they disagreed on the reason for the reduction. The Parties agreed that the Tenants paid a security deposit of \$1,750.00, and no pet damage deposit. The Parties agreed that they did not do a move-in condition inspection of the rental unit.

The Parties agreed that rent was paid in cash, and that the Landlord did not issue receipts to the Tenants for these payments.

The Landlord said he posted a Two Month Notice on the door of the rental unit on April 30, 2019, with an effective vacancy date of June 30, 2019. The Landlord said he served the Tenants with the 10 Day Notice via registered mail on May 14, 2019, and he provided a Canada Post tracking number to support this testimony.

The Landlord said that the Tenants paid him rent for February and March 2019, but that they were \$600.00 short in April 2019. He said the Tenants did not pay him anything for May and June 2019. The Tenants testified that they paid the full rent in April 2019, but that they stopped paying rent, once they received the Two Month Notice on April 30, 2019. The Tenants said they were told by someone that they had two months free rent in this situation.

In the hearing, the Landlord said that the 10 Day Notice was issued because of \$3,600.00 in unpaid rent for April and May 2019. He said it was signed and dated May 14, 2019, and had a vacancy effective date of May 24, 2019. The Landlord said the 10 Day Notice was served on the Tenants by registered mail on May 14, 2019; he submitted Canada Post tracking numbers to support this evidence.

The Tenant said that he did not receive the registered mail package, but as noted above, the Tenant said he did not always go through the mail, as there was a lot of it delivered to the residential property.

## Analysis

### *Two Month Notice*

The Tenants' evidence was that they received the Two Month Notice on April 30, 2019, Therefore, I find that it was served and received on that day. However, the Landlord did not submit evidence that the purchaser asked the landlord, in writing, to give notice to end the tenancy on one of the following grounds (pursuant to section 49(5) of the Act):

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

As a result of this breach of the Act, I find the Two Month Notice is not valid and I grant the Tenants' application to cancel the Two Month Notice.

#### 10 Day Notice

A 10 Day Notice is not effective earlier than ten days after the date the tenant receives it. Under section 90 of the Act, a document served by registered mail is deemed served five days after mailing. In this case, the 10 Day Notice was sent by registered mail on May 14, 2019, and therefore, deemed received on May 19, 2019.

Section 53 of the Act allows the effective vacancy date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the listed effective date of May 24, 2019, on the 10 Day Notice is changed to May 29, 2019. Further, a party cannot avoid service through a failure or neglect to pick up mail.

Based on the evidence before me overall, I find that the 10 Day Notice is consistent with section 52 of the Act, as to form and content, and is, therefore, valid. Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants.

#### Unpaid Rent

In the hearing, the Parties disagreed as to how much rent was paid in April 2019; however, the Tenants acknowledged that they did not pay any rent in May or June 2019. The Landlord does not have any supporting evidence that the Tenants did not pay full rent in April 2019, and pursuant to section 26(2) of the Act, a landlord is required to provide a tenant with a receipt for rent paid in cash. Accordingly, I dismiss the Landlord's claim for \$600.00 owing by the Tenants in rent for April 2019.

The Tenants said they did not pay rent in May or June 2019, because they believed they were allowed two months' free rent when issued a Two Month Notice. However, the Two Month Notice was cancelled, so it is of no force or effect. As such, the Landlord does not owe the Tenant even one month free rent. I, therefore, award the Landlord a monetary order of \$6,000.00 for two months' unpaid rent. The Landlord is authorized to set off the Tenants' security deposit of \$1,750.00 in partial satisfaction of this award. I grant the Landlord a monetary order of \$4,250.00 for the remainder of the award owing by the Tenants to the Landlord. As both Parties were partially successful in their applications, I decline to award recovery of the filing fee to either Party, as this is set off.

Conclusion

The Tenants' application to suspend or restrict the Landlord's right to enter the rental unit is dismissed. The tenancy is ending; therefore, I dismiss this claim without leave to reapply.

The Tenants' application to cancel the Two Month Notice is confirmed and the Two Month Notice is cancelled and of no effect. The Landlord's application for an order of possession for unpaid rent under the 10 Day Notice is granted, effective **two days after service of this Order** on the Tenants.

The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the Landlord a monetary order under section 67 of the Act from the Tenants in the amount of **\$4,250.00**. This order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Neither Party is awarded recovery of the application filing fee.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 27, 2019

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Residential Tenancy Branch