



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL-2M RP FF

### Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution made on July 22, 2019 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated July 15, 2019 (the "Two Month Notice");
- an order that the Landlords make repairs to the unit, site, or property; and
- an order granting recovery of the filing fee.

The Tenants D.D. and G.D. attended the hearing and were accompanied by T.S., a witness. The Tenants advised that Z.D. is their infant son. Accordingly, pursuant to section 64(3) of the *Act*, I find it appropriate to amend the Application to remove Z.D. as a party. The Landlord G.D.W. attended the hearing and was assisted by T.L. who provided translation services. All those giving testimony provided a solemn affirmation.

The Tenants testified that Landlords were served with the Notice of a Dispute Resolution Proceeding package by registered mail. Although the parties were unable to recall the specific date of service and receipt, G.D.W. acknowledged receipt in July 2019.

The Landlords submitted documentary evidence in response to the Application. G.D.W. confirmed the documentary evidence was served on the Tenants in person on September 15, 2019. The Tenants acknowledged receipt on that date.

No issues were raised with respect to service or receipt of the documents referred to above. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether the tenancy will continue. Accordingly, the parties were advised during the hearing that I would be exercising my discretion to dismiss all but the Tenants' request for an order cancelling the Two Month Notice and to recover the filing fee, with leave to reapply as appropriate. However, in light of my findings below, the Tenants' Application is dismissed, without leave to reapply.

In addition, the evidence of G.D.W. was provided through a translator, T.L.

### Issues to be Decided

1. Are the Tenants entitled to an order cancelling the Two Month Notice?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties agreed the tenancy began on July 1, 2017. Rent in the amount of \$1,845.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$900.00, which the Landlords hold.

The Landlords wish to end the tenancy. Accordingly, the Landlords issued the Two Month Notice, which was served on the Tenants in person on July 16, 2019. During the hearing, the Tenants acknowledged receipt of the Two Month Notice on that date.

The Two Month Notice was issued on the basis that the Landlord or a close family member intends in good faith to occupy the rental unit. In support, G.D.W. testified that his son and co-Landlord, Z.W., is 24 years old and desires more independence. Therefore, Z.W. intends to move into the rental unit on October 5, 2019, following a vacation in China. According to G.D.W., Z.W. has already taken steps to set up Shaw and BC Hydro services. G.D.W. testified that it does not make sense for his son to live elsewhere and pay more rent. G.D.W. confirmed that Z.W. will definitely move into the rental unit, and that both Landlords understand the potential consequences of failing to do what was indicated in the Two Month Notice. In support, the Landlords provided a signed letter, dated September 15, 2019, in which W.Z. states:

*I need more private space. I used to stay with my family. Now I am an adult, and eager to live by myself and this is the only reason we sent the notice to our tenant.*

[Reproduced as written.]

In reply, the Tenants rely on a letter dated November 20, 2018, in which the Landlords offer to renew the tenancy agreement. Further, the Tenants testified that during a discussion with the Landlords in December 2018, the Landlords demanded a rent increase to \$2,600.00 per month or Z.W. would move into the rental unit. However, the parties agreed to increase rent to \$1,845.00, effective April 1, 2019. In addition, T.S. testified the Landlords knew their rights and obligations under the tenancy agreement and the Act.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 49(3) of the Act permits a landlord to take steps to end a tenancy in the if the landlord or a close family member intends in good faith to occupy the rental unit. In this case, G.D.W. testified the rental unit will be occupied by Z.W. G.D.W. advised that Z.W. has taken steps to set up services to the rental unit and understands the consequences

of failing to follow through. The Tenants submit the Landlords offered to renew the tenancy agreement on November 20, 2018, roughly 9 months before the Two Month Notice was issued. They also asserted that the Landlord demanded more rent and threatened to move Z.W. into the unit if the Tenants did not pay the increased amount.

I find there is insufficient evidence before me to conclude the Landlords do not intend in good faith to do what was indicated on the Two Month Notice. I accept the testimony of G.D.W., who provided a reasonable explanation for Z.W. occupying the rental unit. I also accept that the Landlords understand the consequences of failing to do what was indicated in the Two Month Notice, as articulated in section 51 of the *Act*. Further, I find that roughly 9 months passed between the Landlord offering to renew the tenancy and the Two Month Notice being issued. Therefore, I find there is little reliance that can be placed upon it. In addition, I find there is insufficient evidence before me to find the Landlords demanded that the Tenants pay more rent. This is confirmed in the parties' agreement to increase rent in a more modest amount effective April 1, 2019. I was not referred to any documentary evidence that would lead me to question the intentions of the Landlords further. Accordingly, I find the Tenants' Application is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55(1) of the *Act* requires that I grant an order of possession in favour of the Landlord. In this case, I have reviewed the Two Month Notice and find that it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective on September 30, 2019, at 1:00 p.m.

### Conclusion

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

By operation of section 55(1) of the *Act*, the Landlords are granted an order of possession which will be effective on September 30, 2019, at 1:00 p.m. The order of possession may be filed in 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: September 23, 2019

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Residential Tenancy Branch