



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL OLC RP FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on January 23, 2020. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence. The Landlord confirmed receipt of the Tenants' application and Notice of Hearing. I find both parties have sufficiently served each other with their respective packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the grounds the Tenants applied for, with leave to reapply, with the exception of the following claims:

- to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property (the Notice)

### Issues to be Decided

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

### Background and Evidence

The parties agree that the Tenants are now on a month-to-month tenancy. The Tenants acknowledged receiving the Notice on November 16, 2019. The Landlord issued the Notice for 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).*

In the hearing, the Landlord stated that she issued the Notice because her daughter is wanting to move in. The Landlord's daughter attended the hearing to provide direct testimony regarding her plans. The Landlord's daughter also provided a written statement attesting to the facts. She stated she is in a long term relationship with her boyfriend and they are looking for more space. The Landlord's daughter stated that she currently lives in and owns a 1 bedroom condominium in the lower mainland. She stated that she has lived there with her boyfriend for years now, but they are wanting to expand their family and need more space (the subject unit has multiple bedrooms and yard access). The Landlord's daughter explained that she has looked into getting a dog, and she is not allowed to do this at her current condominium. She is also hoping to get married and start a family with her boyfriend and all of these things are going to require more than a 1 bedroom condo (which has pet restrictions). This is why the Landlord has opted to take the space over for her daughter, so that she and her boyfriend can move in, have more bedrooms, a backyard, and more freedom to expand their family.

The Tenants stated that they were not made aware of the Landlord's plans to take the unit over until they asked for a repair to be made to the garage door. The Tenants feel the timing of the Notice is suspicious and that it indicates the Landlord is not acting in good faith. The Tenants stated that the Landlord is potentially looking to get more money out of the rental unit, and to not have to make the repairs they asked for.

The Landlord explained that this has never been about money because, despite this being a longer term tenancy, they have never tried to increase rent. The Landlord stated she is happy with current rent, but she just wants to allow her daughter to use it. The Landlord directly denied that this Notice has anything to do with repairs.

### Analysis

In the matter before me, once the Tenant alleges bad faith, the Landlord has the onus to prove that the reason in the Notice is valid and that she intends in good faith to occupy the unit (as indicated on his 2-Month Notice).

Based on the evidence and testimony before me, I make the following findings:

I acknowledge that there has been a degradation in the relationship between the Landlord and the Tenants leading up to this dispute. I also acknowledge that prior to this Notice being issued, the Tenants made a request to have some repairs done, which could be considered suspicious timing for the Notice to be issued. The Tenants' are alleging that the Landlord has issued this 2-Month Notice in bad faith, rather than because she actually needs to live there. However, in response to the Tenants' allegations of bad faith, and to explain why she issued the 2-Month Notice, the Landlord expressed that her daughter lives in, and owns, a condo which no longer suits her needs and aspirations. The Landlord explicitly denied that this eviction has anything to do with the Tenants's requests for repairs.

The Landlord's daughter attended the hearing and corroborated (along with a written statement) that she is currently living in her 1 bedroom apartment with her boyfriend, and she is waiting for the Tenants to move out of her mother's rental unit (top floor of a house) so that she can move in with her partner, get a dog, get married, and start a family. The Landlord's daughter explained that she wants to use this rental unit to enable and start the next chapter of her life.

Ultimately, after looking at the totality of the situation before me, I find the Landlord's explanation regarding her intentions, including her daughter's use of the subject property, is sufficiently compelling and is reasonable. I find the Landlord has sufficiently demonstrated her good faith intentions. The Tenants' application is dismissed, and the tenancy is ending.

Even though the tenancy is ending, the landlord still must utilize the rental unit as set out in the 2-month notice, as laid out below. Failure to do so could result in compensation being awarded to the Tenants. I have included the following relevant portion of the Act:

***Tenant's compensation: section 49 notice***

*51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

*(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or*

*(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.*

Overall, I find the Landlord has sufficiently supported her reasons to issue the Notice. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the Act, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession, which will be effective January 31, 2020 (the effective date of the Notice).

As the Tenants were not successful with their application, I dismiss their claim to recover the cost of the filing fee.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy dated November 16, 2019, is dismissed. Further, I dismiss the Tenants' request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective January 31, 2020, after service on the Tenants. If the Tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: January 23, 2020

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Residential Tenancy Branch