



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL-2MN, FFT

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act), seeking to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 28, 2020 (2 Month Notice), and to recover the cost of the filing fee.

Tenant MK (tenant) and the landlords attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. Only the evidence relevant to my findings is discussed below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they had received the documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. Given the above, I find the parties were sufficiently in accordance with the Act.

### Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. The landlords will have any applicable orders emailed to them for service on the tenants.

### Issues to be Decided

- Should the 2 Month Notice be cancelled?
- Are the tenants entitled to the recovery of the cost of their filing fee under the Act?

### Background and Evidence

The tenant confirmed that they were served on either February 28<sup>th</sup> or 29<sup>th</sup>, 2020 with the 2 Month Notice dated February 28, 2020. The effective vacancy date on the 2 Month Notice is listed as April 30, 2020. The tenants disputed the 2 Month Notice on March 9, 2020, based on the documentary evidence submitted in evidence, which is within the 15-day timeline provided for under the Act.

The tenants continue to occupy the rental unit. The 2 Month Notice is signed, dated and completed in full, in accordance with the Act.

The tenant testified that they don't feel the 2 Month Notice has been issued in good faith and question the wording on the 2 Month Notice that relates to "decommission/legalize" the rental unit. The landlords referred to their documentary evidence, the first document of which is the was the Buyers Notice to Seller for Vacant Possession dated January 6, 2020. The second document is the Contract for Purchase and Sale of the property dated January 6, 2020, which includes a subject that the that all the tenant possessions and garbage will be removed, and that the property contains unauthorized accommodation which could be ordered decommissioned and that all costs to decommission or legalize the suite will be the responsibility of the sellers. The third document presented by the landlords is the removal of the subject to sale subject dated February 28, 2020.

The tenant testified that they spoke to the buyer who verbally advised them that they won't be living there. The tenant confirmed that they did not have a signed statement or the buyer as a witness to support this claim. The landlords denied that the buyer had ever advised them that they do not intend to occupy the entire home.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**2 Month Notice** – Sections 49(5) of the Act applies and states:

- 49(5) A landlord may end a tenancy in respect of a rental unit if
- (a) the landlord enters into an agreement in good faith to sell the rental unit,

- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (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;  
[Emphasis added]

Based on the above, I find the landlord has provided sufficient evidence of subsections a, b and c above. I also find that the written legal contract is afforded much more weight than an allegation by the tenant of a verbal discussion with the buyer, especially given that the landlords deny that the buyer had ever advised them that they do not intend to occupy the rental unit. Therefore, I prefer the evidence of the landlords over that of the tenant as the landlords' evidence is based on a legal contract between the landlords and the buyer. As a result, **I dismiss** the tenants' application to cancel the 2 Month Notice as I find the 2 Month Notice is valid and should be upheld.

Section 55 of the Act applies and states:

**Order of possession for the landlord**

**55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[Emphasis added]

Given the above and considering that I find the 2 Month Notice complies with section 52 of the Act, I must grant the landlord an order of possession. Given the current State of Emergency related to COVID-19 and the related *Ministerial Order M089*, and section 62(3) of the Act, I will extend the effective vacancy date to **five (5) days** after service on the tenants, and in any event, no earlier than April 30, 2020 at 1:00 p.m.

As the tenants' application has failed, I do not grant the tenants the recovery of the filing fee.

### Conclusion

The tenants' application to cancel the 2 Month Notice dismissed without leave to reapply as indicated above.

The landlord has been granted an order of possession effective five (5) days after service on the tenants, and in any event no earlier than April 30, 2020 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The filing fee is not granted as indicated above.

This decision will be emailed to both parties as indicated above. The order of possession will be emailed to the landlords only for service on the tenants.

The link to *Ministerial Order M089* can be found at:

[http://www.bclaws.ca/civix/document/id/mo/mo/2020\\_m089](http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089)

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: April 22, 2020

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Residential Tenancy Branch