



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

The tenants filed an Application for Dispute Resolution on July 24, 2020 seeking an order to cancel the 'Two Month Notice to End Tenancy for Landlord's Use of Property' (the "Two Month Notice") and an order that the landlord comply with the legislation and/or the tenancy agreement. Additionally, they applied for recovery of the application filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on August 31, 2020.

Both parties attended the conference call hearing. I explained the process and offered each party the opportunity to ask questions. Each party was provided the opportunity to present oral testimony and make submissions during the hearing.

The tenant stated that they delivered notice of the dispute via registered mail to the landlord. This included the documentary evidence that the tenant is presenting in this hearing. The landlord confirmed they received this information on July 31, 2020.

The tenants confirmed they received the landlord's evidence prepared in response to their claim. The landlord hand-delivered the material to them on August 19. I am satisfied the tenants received the landlord's evidence and had adequate time to review the material prior to the hearing.

### Issue(s) to be Decided

Are the tenants entitled to an order that the landlord cancel the Two Month Notice pursuant to section 49 of the *Act*?

Should the tenant be unsuccessful in seeking to cancel the Two Month Notice, is the landlord entitled to an order of possession pursuant to section 55(1) of the *Act*?

Are the tenants entitled to an order that the landlord comply with the *Act*, the regulation and/or the tenancy agreement?

Are the tenants entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement in place between the parties. This was for the initial rent amount of \$1,500.00 per month. The rent currently is \$1,642.00. The tenancy began on October 1, 2014, with both parties signing the agreement on September 25, 2014.

The landlord issued the Two Month Notice on July 7, 2020, for the tenancy to end on October 1, 2020. The landlord provided that the unit will be occupied by a close family member – this is the landlord or the landlord's spouse. They served the tenant with this document by leaving it with them, attaching it to the door of the unit with an accompanying typed letter of the same date. The tenants confirmed they received these documents as described by the landlord.

In the hearing, the landlord gave their reasons for issuing the Two Month Notice. In brief, this is because of their acceptance of job, and the need for a residential space going forward. They pointed to the letter dated July 7, 2020 to show this explained the matter to the tenants at that time.

The letter reviews a discussion had between the tenants and the landlord regarding the need for the space, and their attempt at mutually resolving the matter. The letter mentions concerns that the landlord had with recent "breaches of violation in Tenancy Agreement". The landlord's intention, as stated in the letter, was to have a conversation with the hope of reaching a mutual agreement to end the tenancy.

The landlord presented in the hearing that their need for the unit for September 1, 2020, and this was their hope in having a mutual agreement in place so they could have the vacant unit for that date. When the tenants stated in an initial discussion that "it wasn't really going to work", the landlord issued the Two Month Notice. Their viewpoint is that this works in the tenants' favour because it extends the time that the tenants must find other accommodation. Additionally, it leaves the tenants with the last month rent-free as per the *Act*.

The landlord provided another letter dated August 3, 2020. They wrote this to the tenants after receiving notice of this hearing. This was another attempt at reaching a mutual agreement to end the tenancy. The letter enclosed the "award letter for the position" which the landlord began in September. This July 3, 2020 from the employer awards the landlord a job position, with the start date at that time to be determined.

The landlord also presented copies of emails that show complaints from the adjacent unit occupant; the landlord's notice of entry to the unit; and photos of the state of the rental unit yard that caused concern.

The tenant desires to cancel the Two Month Notice. Their submission is that the landlord issued this notice due to "other ancillary events", and the Two Month Notice was "not conceived with honest intention." They feel the end of tenancy is punitive in nature because of past issues. They stated they were subject to a competition for the end of tenancy between their unit and the adjacent unit. Based on a balance of probabilities, the landlord issued the Two Month Notice for other issues. They added: "If they just never said anything about other issues, we'd be on our way."

The issue of the landlord issuing the Two Month Notice in bad faith, from the tenants' perspective, is also the essence of their request for an order that the landlord comply with the provisions of the Act.

The tenants also stated in the hearing that they were awaiting to finalize plans in short order for another place to live. They are moving on September 30, 2020. This means they are "out of there" at that time. They reiterated that these other issues should not have come up when the landlord issued the Two Month Notice.

The tenants provided a written argument, wherein they state: "the introduction in our case of unduly insensitive comments delivered via letter that contain unsubstantiated claims of improper conduct and damage to property are not part of the processes of good faith landlord use eviction." They feel this was due to a "progressive pattern", with the landlord finalizing their intention when they "sought refuge in the 2 month eviction process."

The tenants also provided copies of letters from the landlord that show the landlord requested entry to the unit for maintenance, and the landlord stating concerns that originated from the adjacent unit.

### Analysis

Section 49(3) of the *Act* states that a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. This is to specify a date that is not earlier than 2 months after the date the tenant receives a Two Month Notice.

Section 49(8) of the *Act* states that within 15 days of receiving a Two Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the Two Month Notice was issued pursuant to section 49 and I accept the landlord's evidence that they served this document to the tenants on July 7, 2020.

When a landlord issues a Two Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide enough evidence to prove the reason to end the tenancy.

The tenant has mentioned interactions with the landlord in the past that they feel have accumulated over time. These involve allegations from a neighbour, and rather short conversations with the landlord about the issues at play. The tenant has also stated their immediate intention to move, with plans set very soon to be finalized. I give the tenants evidence little weight and find it does not establish a "progressive pattern" of the landlord trying to move forward to eviction.

I give more weight to the landlord's account that sets forth their acceptance of employment, one that necessitated their issuing the Two Month Notice. I am not persuaded by the tenants' submissions that the discussions on complaints and other issues with the yard in the past cross over into the current needs of the landlord. Additionally, I find the tenants' notion that the landlord opted for a contest to determine which unit would be evicted is unfounded.

I find the tenant's submission is, in the main, their conjecture that the landlord is acting in bad faith by obfuscating the reason for issuing the Two Month Notice. The tenants' statements in the hearing on discussions they had with the landlord are outweighed by the submissions of the landlord that set out a real need to have the unit for a family member. The *Act* allows a landlord to end a tenancy for this reason, provided they have undertaken to do so in the correct manner with due regard to the rights of the tenant.

While the tenants maintain the landlord acted in bad faith when issuing the Two Month Notice on July 7, 2020, the evidence they present does not make this plain as fact. I find the landlord issued the notice for a valid, legally acceptable reason.

For these reasons, I dismiss the tenants' application to cancel the Two Month Notice. The tenancy is ending.

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

I find the Two Month Notice complies with the requirements for form and content with each detail. These are: the signature and date of the landlord; the address of the rental unit; the effective date of the notice (i.e., the move out date); and the grounds for ending the tenancy. The document itself is in the approved form as specified in the *Act*.

Given my finding that the Two Month Notice complies with the requirements of form and content, the landlord is entitled to an order of possession on the effective date they specified.

As the tenant was not successful in their application, I find they are not entitled to recovery of the \$100.00 application filing fee.

### Conclusion

For the reasons outlined above, I dismiss the tenant's application for a cancellation of the Two Month Notice, without leave to reapply.

I grant an Order of Possession to the landlord effective **October 1, 2020**. Should the tenant fail to comply with this Order, this Order may be filed 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 *Act*.

Dated: August 31, 2020

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Residential Tenancy Branch