



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** CNL-4M, OT

### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Although the tenants' application references a 4 Month Notice to End Tenancy, both parties confirmed that this application pertains to a 2 Month Notice to End Tenancy for Landlord's Use. As the tenants confirmed receipt of the 2 Month Notice which was posted on their door on September 14, 2020, I find that this document was deemed served to the tenants in accordance with sections 88 and 90 of the *Act* on September 17, 2020, 3 days after posting.

### **Issues to be Decided**

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### **Background and Evidence**

This month-to-month tenancy began in January of 2005. Monthly rent is currently set at \$1,175.00, payable on the first of the month. A security deposit was collected by the original landlord at the beginning of the tenancy.

On September 14, 2020 the landlord served the tenants with a 2 Month Notice for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord submitted a statement for why this were seeking an Order of Possession pursuant to the 2 Month Notice. The landlord stated that they suffered from relapsing-remitting MS, with the most recent flare up occurring in June of 2020. The landlord, who currently resides in the upper unit, is seeking to end the tenancy in order to accommodate more space for an office as well as provide accommodation for guests such as the landlord's parents who would be assisting the landlord with their care in anticipation that the disability would worsen over time.

The landlord testified that accommodations have already been made to provide the tenants with more time to find housing, with an extended effective date of January 31, 2021. The landlord confirmed in the hearing that they are unable to extend the effective date any further, and have given the tenants more than the required 2 months as required by the *Act*.

The tenants testified that they felt the landlord's request to end the tenancy on January 31, 2021 is unfair and unjustified. The tenants testified that they are seniors who would be displaced during a housing crisis and a second wave of Covid-19, and were verbally promised by the landlord that they would be given ample time to move. The tenants also expressed concern about having to move during the winter months. The tenants requested an extension until April 30, 2021 in order to allow them more time to find housing.

## **Analysis**

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”*

Although I am sympathetic to the fact that the tenants would be required to move during a difficult time, I find that the landlord had waited until September 14, 2020 to serve the tenants with the 2 Month Notice, after the period when a Ministerial Order was in place which prohibited the issuance of any 2 Month Notices. I also find that the landlord had provided a valid explanation for the urgency in taking possession of the rental unit, citing a recent flare-up, and the fact that the landlord's illness will worsen over time. I find that the landlord had provided the tenants with more time than required by the *Act*, and have taken in consideration the tenants' concerns while balancing their own needs. Although the tenants testified that the landlords had provided them with a verbal promise to give them more time to move, I am not satisfied that the tenants had provided sufficient evidence to support that any specific and binding mutual agreements were made between the parties.

I find the landlord to be forthright and credible, and I find that the landlord has met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has met their onus of proof to show that the landlord, in good faith, requires the

tenants to permanently vacate the rental unit in order to for the landlord to occupy the lower portion of the home for their own use. Accordingly, I dismiss the tenants' application to cancel the 2 Month Notice dated September 14, 2020. I find that the 2 Month Notice complies with section 52 of the *Act*, which requires that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 55(1) of the *Act* reads as follows:

**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.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that the landlord is entitled to an Order of Possession. I do not find that the landlord has contravened the *Act* or tenancy agreement, and therefore I dismiss the tenants' to extend the effective date of the 2 Month Notice to End Tenancy. The landlord will be given a formal Order of Possession for the effective date of January 31, 2021, which must be served on the tenants. If the tenants do not vacate the rental unit by January 31, 2021, the landlord may enforce this Order in the Supreme Court of British Columbia.

### **Conclusion**

I dismiss the tenants' entire application without leave to reapply. I find that the landlord's 2 Month Notice is valid and effective as of January 31, 2021.

The landlord will be given a formal Order of Possession effective January 31, 2021, which must be served on the tenants. Should the tenants 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 *Residential Tenancy Act*.

Dated: November 24, 2020

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Residential Tenancy Branch