



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, RR, MNDCT, OLC, FFT

### Introduction

The tenants have applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Notice") under section 49 of the *Residential Tenancy Act* ("Act"). In addition, they have applied for relief under sections 62, 65, 67, and 62 of the Act, including for recovery of the filing fee under section 72 of the Act.

Both parties attended the hearing on January 11, 2021, held by teleconference.

No issues of service were raised by the parties.

### Preliminary Matter – Severing Unrelated Issues in the Tenants' Application

Rule 2.3 of the *Rules of Procedure* states that "Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply."

In this dispute, based on both the above-noted rule, and in the interest of case management and the limited time in which to conduct a hearing, I dismiss the tenants' application for relief under sections 62 (landlord compliance), 65 (rent reduction), and 67 (compensation) of the Act, with leave to reapply. As explained to the tenants, they remain at liberty to reapply for those claims not dealt with in today's hearing.

### Issues

1. Are the tenants entitled to cancel the Notice?
2. If not, are the landlords entitled to an order of possession?
3. Are the tenants entitled to recovery of the filing fee?

### Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on October 14, 2017 and monthly rent is \$1,255.65, which is due on the middle day of the month. There is a security deposit of \$625.00.

On October 16, 2020, the landlords served the tenants with the Notice. No copy of the Notice was submitted into evidence by either party, but the parties were not in disagreement with the information that was contained in the Notice. The Notice indicated that the end of tenancy effective date was January 13, 2021. The reason for the tenancy ending (according to the landlord) was so that the landlord or a close family member – in this case, the landlord's daughter – could occupy the rental unit.

The landlord testified that he, his wife, and two adult children occupy the upstairs, three-bedroom floor of the house. The daughter, who is 28, is employed by a bank but works from home. Presently, she works in a shared space along with other family members. Photographs of the workspaces on the dining room table, and nearby desks, were submitted into evidence. Because the daughter works for a bank, privacy requirements and expectations of her employer necessitate the need for her to work out of the lower part of the house, the rental unit. The landlord's daughter briefly testified that, "I need my own personal office."

Under direct examination by landlords' counsel, the landlord testified that he has no ulterior motive for issuing the Notice, and that they simply "need space for my daughter."

The tenants dispute the reason why the landlords are issuing the Notice. They remarked that the witness' testimony was "unsubstantiated." They argued that the landlords' reasons for issuing the Notice are the same that they were two years ago. (A copy of a decision, in which the landlords' notice to end tenancy for landlord's use of property was cancelled, was submitted by the tenants.) The tenants argued that the landlord has no intention of moving their daughter into the rental unit, and that the landlords simply do not want to bother with the tenants and their many needs. In addition, they argued that the landlords do not want to have to listen to the tenants' two young children, aged 6 and 8.

Finally, the tenants argued that they feel like “this was all fabricated.” They added that there are no photographs of boxes that might support an argument that the daughter intends to move in. They also remarked that at no time did the landlords indicate that at some point they would want their daughter to move in.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this dispute, the landlords issued a notice to end tenancy pursuant to section 49(3) of the Act, which states that “A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

The landlords, along with their daughter, gave evidence that the sole reason they need to end the tenancy is so that the daughter can obtain a private space where she can work from home. The daughter testified, “I need my own personal office.”

Turning briefly to the meaning of “occupy,” it should be noted that section 49 of the Act gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see also: [Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use](#)). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that “occupy” means “to occupy for a residential purpose.” (See for example: *Schuld v Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy to move into the rental unit if they or their close family member, or a purchaser or their close family member, intend in good faith to *use the rental unit as living accommodation or as part of their living space*.

While I have no doubt that the landlords are issuing the Notice in good faith, I am not persuaded that the daughter intends to occupy the rental unit in a manner consistent with section 49(3) of the Act. There are no photographs of boxes with the daughter’s belongings (that the tenants argued would be proof that the daughter intends to move into the rental unit) because, on the evidence before me, the daughter does not appear to be intending to move into and occupy the rental unit as living accommodation. Rather, the rental unit is intended to be used as office space, and not as living accommodation or as part of the landlords’ and daughter’s living space.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving the ground on which they issued the Notice. Accordingly, I hereby cancel the Notice and it is of no force or legal effect. The tenancy shall continue until it is ended in accordance with the Act.

The tenants are entitled to recovery of the application filing fee under section 72 of the Act. In satisfaction of this award the tenants may make a one-time deduction of \$100.00 against a future rent payment.

### Conclusion

### **I grant the tenants' application.**

The landlords' Notice, dated and served on October 16, 2020, is hereby cancelled. The tenancy shall continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me under section 9.1 of the Act.

Dated: January 11, 2021

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Residential Tenancy Branch