



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

The tenants completed their Application for Dispute Resolution (the “Application”) in this matter on October 27, 2020. They are seeking a cancellation of the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”) issued by the landlord on October 12, 2020.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on January 18, 2021. Both the landlord and the tenants attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, both parties confirmed their receipt of the other’s prepared documentary evidence. On this basis, the hearing proceeded.

### 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*?

If the tenants are unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit pursuant to section 55 of the *Act*?

Are the tenants entitled to reimbursement of the Application filing fee, pursuant to section 72 of the *Act*?

### Background and Evidence

The tenants and landlord both verified the terms of the tenancy agreement at the start of the hearing. The tenants were paying \$2,000 per month, which was a decrease from the original agreed-upon amount of \$2,250 at the start of the tenancy. They paid an up-front security deposit of \$1,125.

The tenancy agreement provided by the landlord here shows a tenancy start date of January 1, 2020, and a fixed-term ending date of December 31, 2020. The agreement provides that “the tenancy may continue on a month-to-month basis or another fixed length of time” at the end of that fixed term.

Both parties provided a copy of the Two-Month Notice issued by the landlord on October 12, 2020. This document provides the move-out date for the tenants on December 31, 2020, with the reason being the landlord or their spouse will occupy the rental unit. The document on page 2 indicates the landlord served it in person; the landlord clarified in the hearing this service was on October 12, 2020.

The tenants verified service in person on October 12. This was when the landlord initially visited the unit to inspect for the first time.

In the hearing, the landlord verified their need of the unit for their own use. Mobility is an issue, so they are changing their access to the house. In response to this testimony, the tenants stated they did not feel the notice was invalid; rather, they question the process and the manner in which it was presented to them. The circumstances of ending a tenancy are challenging, with “a lot of moving parts.” The tenants compared their situation to that of other tenants who lived adjacent to their unit, stating those other tenants had more time, and were told of a pending eviction from the previous owner.

To this, the landlord provided that it was their belief that it was issued in good faith at the first available opportunity. This was at the initial first meeting when the landlord visited to inspect the rental unit.

The landlord also added they did agree to extend the final move-out date to the end of January – this is what they “deemed the most reasonable approach.” They referred to a letter of December 22 they provided in the evidence where they gave this offer to extend.

The landlord reiterated their December 22 offer came from the tenants' initial request made in an email to the landlord on October 24, 2020. In the hearing, the landlord stated this shows the tenants were working toward a move-out at the end of January 2021.

In response to this, the tenants proposed a further extension of the move-out date to the end of February 2021. The landlord reiterated their need to have the rental unit for their own use in short order; however, the landlord agreed to end the tenancy, and have the tenants move out, at the end of February. This is in the interest of having the parties solve the matter completely.

Before the close of the hearing, one of the landlord's representatives queried on the applicability of the landlord's compensation for one month's rent, in light of the parties reaching an agreement on the end of the tenancy. They made reference to s. 51 of the *Act*.

### Analysis

The parties in the hearing reached an agreement on the end of tenancy date. This is to be February 28, 2021.

The *Act* s.63 provides for the parties' opportunity to settle the dispute. In line with s. 63(2), I herein record the settlement in the form of a decision and enshrine the landlord's right to possession of the unit in the form of an Order. The Order of Possession is for February 28, 2021.

Given the agreement between the parties, I order that the Two-Month Notice issued by the landlord on October 12, 2020 is cancelled. With this cancellation, the landlord's obligation under s. 51 for one month's rent payment to the tenants is annulled. This acknowledges the good faith of the landlord in granting two extra months beyond the initial set move-out date.

As the tenants were successful in their application for cancellation of the Two-Month Notice, I find the tenants are entitled to recover the \$100.00 filing fee paid for their application. I authorize the tenants to withhold the amount of \$100.00 from the February 2021 rent payment.

Conclusion

In line with s. 62(2) of the *Act*, I grant to the landlord an Order of Possession effective February 28, 2021. 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 *Act*.

Dated: January 20, 2021

---

Residential Tenancy Branch