



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNRT, MNDCT, LRE

### Introduction

This hearing dealt with the tenant's 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 (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Landlord MK (the landlord) confirmed that they had been given authorization to act on behalf of Landlord JK (their spouse) and Landlord JS.

As the tenant confirmed that they received a copy of the 2 Month Notice posted on the door by the landlords on January 12, 2021, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that all of the landlords received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on January 20, 2021, I find that the landlords were duly served with these packages in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Preliminary Issue – Tenant's Application for a Monetary Award

As outlined below, Residential Tenancy Branch's (RTB's) Rule of Procedure 2.3 establishes that Arbitrators are able to use their discretion in ensuring that only those issues that are related to each other are to be considered at hearings:

*2.3 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.*

I advised the parties at the hearing that the central issue in dispute appeared to be whether this tenancy could continue, and if so, whether any other orders needed to be issued should this be a continuing tenancy.

For this reason, I dismissed the tenant's claims for a monetary order with leave to reapply, as this part of the tenant's application was unrelated to the tenant's application to cancel the landlords' 2 Month Notice.

### Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy?

### Background and Evidence

The tenant gave undisputed sworn testimony supported by written evidence that they moved into the log house located at the second address identified above on August 1, 2012. They said that the terms of their oral agreement with Landlord JS required the tenant to pay monthly rent of \$1,200.00 to Landlord JS by the first of each month. There is no security deposit and no written tenancy agreement between the parties. In the tenant's written evidence, they indicated that this dual address property included a house (i.e., the log house where the tenant has been residing since 2012), a trailer, a cabin, a barn, a shop, corrals, and property for grazing and haying. For the past five or six years, the tenant has been keeping cattle on the grounds the tenant maintains were part of their oral agreement with Landlord JS.

The landlord testified that they purchased this quarter section of land with Landlord JS in 2009. They said that their agreement with Landlord JS was that whichever of them needed use of the pasture land and supply of hay would use this property. They

provided no copy of a deed showing that they were partial owners of the quarter section of land; however, the tenant and his advocate did not dispute this assertion. The landlord said that they reside about an hour's distance away from this property.

Although neither party included a copy of the 2 Month Notice in their extensive written evidence, the landlord gave undisputed sworn testimony that they indicated on the 2 Month Notice that the reason for using the property was that their parents planned to relocate from their present residence almost an hour away to the tenant's log house. By returning to the log house where the landlord said their parents were living from 2009 until 2012, they would be able to take care of livestock that the landlords plan to relocate to this property. The landlord gave undisputed sworn testimony that the only address cited on the 2 Month Notice was the second address identified in the tenant's application, that portion of the quarter section where the log house is located.

The landlord provided no statements from their parents to confirm their good faith intention to move to the log house currently occupied by the tenant. The landlord's parents did not attend this hearing to give sworn testimony.

As part of the tenant's claim that the 2 Month Notice was not issued in good faith, the tenant provided considerable written evidence and gave sworn testimony that the real reason that the landlords had issued the 2 Month Notice was that the tenant was unwilling to pay a greatly increased monthly rent. The tenant maintained that their oral tenancy agreement included permission to keep cattle on this property.

By contrast, once Landlord JS became less involved in the running of this property due to their advancing years, the landlord, the landlord's spouse (Landlord JK) and the new Power of Attorney for Landlord JS commenced negotiations to seek a separate monthly payment from the tenant for the use of the agricultural land on this property. The landlord claimed that the tenancy agreement applied only to the log house where the tenant has been residing since 2012. When the tenant was unwilling to enter into an agreement whereby the remainder of the farmland on this property is rented to the tenant, the landlord decided that in order to keep livestock on the property that their parents would need to reside in the log house, the only habitable dwelling on this quarter section of land.

With respect to the tenant's request for an order restricting the landlords' right to enter the rental property, the tenant gave undisputed sworn testimony that in the past Landlord JS had visited the property without first notifying the tenant of their intention to do so. They also said that on occasion, the landlords had allowed people onto the

rental property to practice shooting. As the tenant keeps cattle on this property, the tenant was concerned about the safety of such practices. They requested the issuance of an order restricting the landlords' access to the rental property.

The landlord did not object to my suggested resolution of this portion of the tenant's application by including an order that the landlords be required to provide 24 hours written notice to the tenants on any situation where the landlords or their representatives have occasion to visit or inspect the rental property.

### Analysis

Although neither party supplied a copy of the 2 Month Notice, based on the undisputed sworn testimony of the landlord, it would seem that the landlord identified the following reason for ending this tenancy for landlord's use of the property by April 30, 2021:

- *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...*

Pursuant to section 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice. As the tenants submitted their application to cancel the 2 Month Notice on January 15, 2021, they were within the time limit for doing so. The landlords must demonstrate that they meet the requirements of the following provisions of section 49(3) of the *Act* to end this tenancy:

*...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...*

Section 49(1) of the *Act* provides the following definitions:

*"close family member" means, in relation to an individual,*

- (a) the individual's parent, spouse or child, or*
- (b) the parent or child of that individual's spouse;..*

*"landlord" means*

- (a) for the purposes of subsection (3), an individual who*
  - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and*
  - (ii) holds not less than 1/2 of the full reversionary interest, and*

Without a copy of any documentation from the landlord that would confirm that landlords MK and JK own at least one-half of this property, I am unable to verify that the people that Landlords MK and JK identify as needing to reside in the tenant's log house are in fact close family members of one of the landlords.

I also find that the only evidence before me from the landlord to confirm that their parents do in good faith intend to reside in the log house on this property is the landlord's sworn testimony to that effect. The landlord chose not to call the people who intend to live in the tenant's rental home as witnesses for this hearing. The landlord also presented no signed affidavits or statements from the people who intend to reside in the tenant's rental home that would support the landlord's testimony that they do in good faith intend to live there.

In addition, I note that section 49(7) of the *Act* requires that "a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*." Without any copy of the 2 Month Notice before me, I am unable to determine that the landlords' 2 Month Notice was on the proper RTB form and complied with the content requirements of section 52 of the *Act*.

I find that the landlord has not met the burden of proof required to demonstrate that their 2 Month Notice was issued in good faith and for the purposes stated on that Notice. For these reasons, I allow the tenant's application to cancel the 2 Month Notice, with the effect that this tenancy continues under the terms agreed to when this oral agreement first commenced, that being the payment of \$1,200.00 by the tenant by the first of each month.

Section 70(1) of the *Act* reads as follows:

**70** (1) *The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [landlord's right to enter rental unit restricted].*

Section 29 of the Act reads in part as follows:

**29** (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

*(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;*

*(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:*

*(i) the purpose for entering, which must be reasonable;*

*(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;...*

*(d) the landlord has an order of the director authorizing the entry;*

*(e) the tenant has abandoned the rental unit;*

*(f) an emergency exists and the entry is necessary to protect life or property.*

*(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).*

In accordance with section 70 of the Act, I order that the landlords comply with the Act by ensuring that they provide at least 24 hours written notice to the tenant on any occasion when they or their representatives or tradespeople need to enter the rental property at the second address listed above. Such 24 hour notices must comply with paragraph 29(1)(b) of the Act, as outlined above.

### Conclusion

I allow the tenant's application to cancel the 2 Month Notice. This tenancy continues until ended in accordance with the Act.

I order that the landlords comply with the Act by ensuring that they provide at least 24 hours written notice to the tenant on any occasion when they or their representatives or tradespeople need to enter the rental property at the second address listed above.

The remainder of the tenant's application is dismissed with leave to reapply.

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: March 29, 2021

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Residential Tenancy Branch