# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** FFL OPC MNDL OL / CNL

**Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "**Act**"). The landlords' for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for cause pursuant to section 55;
- a monetary order for damage to the rental unit in the amount of $13,242.92 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants' application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Two Month Notice**") pursuant to section 49.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlords called their son ("**MO**") as a witness.

Each side acknowledged service of the other side's notice of dispute resolution form and supporting evidence package. I find that all parties have been served with the required documents in accordance with the Act.

**Preliminary Issue – Severing of Landlord's Application**

Rule of Procedure 2.3 requires that the claims made in an application be related to one another. In their application, the landlords made two unrelated claims for adjudication. An application for a monetary order and an application for an order of possession for cause.

This hearing was scheduled for one hour. It would not be possible to conduct an adequate hearing on all the claims made by the landlords, and the claim of the tenants, in that time. Accordingly, at the outset of the hearing, I deemed it necessary to sever the landlords' claims and only deal with the most pressing of the issues raised. In light of the fact that the tenancy may be terminated following my determination on the tenants' application to cancel the Two Month Notice, and that the landlord may be granted an order of possession if they are successful on their application to end the tenancy based

on a Notice to End Tenancy For Cause (the "**One Month Notice**"), I found that the claims relating to ending the tenancy were most pressing.

Per Rule of Procedure 2.3, I dismiss, with leave to reapply, all claims made by the landlords in the application except for their application for an order of possession for cause and their application to recover the filing fee.

## Issues to be Decided

Are the landlords entitled to:

1) an order of possession for the reasons set out on the One Month Notice or the Two Month Notice (collectively, the "**Notices**"); and
2) recover the filing fee?

Are the tenants entitled to:

1) an order cancelling the Two Month Notice?

## Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting May 1, 2017. Monthly rent is $900 and is payable on the first of each month. The tenants paid the landlords a security deposit of $450 which the landlords still retain. The rental unit is a basement suite of a single detached house. The landlords and their adult son live in the upper unit.

### History of Parties at the Residential Tenancy Branch

This hearing was not the first hearing between these parties at the Residential Tenancy Branch (the "**RTB**"). They have appeared before an arbitrator of the RTB on at least two other occasions. The first, which the tenants filed on October 18, 2020 and which came to a hearing on January 11, 2021, dealt with the tenant's application for an order requiring the landlords to comply with the Act and for an order to cancel a rent increase.

The second application, made October 25, 2020 and which came to a hearing on January 22, 2021, dealt with the tenant's application to dispute the One Month Notice, to dispute the aforementioned rent increase, and to obtain orders that the landlord comply with the Act and provide the tenants with services and facilities.

The tenants were successful in both of these applications. The One Month Notice was cancelled, as was their rent increase.

### Two Month Notice

On February 8, 2021, the landlord served the Two Month Notice on the tenants by registered mail. It listed an effective date of April 30, 2021. The tenants acknowledged receipt of it and filed an application to dispute it on February 16, 2021.

The Two Month Notice Set out stated that the rental unit will be occupied by the landlord's child.

At the hearing, landlord MO read a prepared statement setting out the reasons why her son wants to move into the basement suite:

- Due to COVID-19, his income has been greatly affected leaving him with the inability to afford the rental costs in the lower mainland.

- [my son] works at [redacted] hospital as a frontline worker and is required to isolate himself every time he comes home to not only keep himself safe, but to keep patients at his family safe and the best place for him to do so is it a basement suite .

- My son has now entered into a serious relationship and he and his partner would like to live together as partners. In order for their relationship to foster into marriage the couple would require a level of privacy they would not have they continued to reside with us.

- In our Filipino culture it is imperative to live together as a family, we always believe in our tradition of close family ties which provides the family stability and advancement .

MO testified that while her son resides in the basement suite she would undertake some repairs of fire damage to the suite which the landlords allege was caused by the tenants (these repairs were the subject of the monetary order which they sought in this application, but was severed above).

MO testified that her son first brought up the possibility of his moving into the basement suite in 2019, but that she refused, as her mother had recently passed away and that she was going through "tough times" and needed her son close for moral support. When the issue came up again the following year, the COVID-10 pandemic was in its early stages, and the son's move would not have been feasible,

The landlord's son attended the hearing and affirmed that the contents of his mother's written statement and testimony were correct.

The landlords also provided a letter from their son's employer which states:

> Beginning in September 2019, and throughout the duration of the COVID-19 global pandemic, [the landlord son] has been employed bye [redacted] and works

> full time at [redacted] hospital. He is a fourth-class maintenance engineer and a healthcare front liner. His primary duties include reporting to the chief engineer and caring of daily maintenance related to the safe operation of the hospital. He performs inspections and repairs of hospital equipment including heating cooling systems, HVAC, water lines, sumps, sterilizers, ovens, warmers, toilets, and bathtubs. In addition, he ensures compliance with various codes and regulations related to power engineering, safety policies, and procedures.
>
> [the landlord son's] position is vital to the safety and operations of [redacted] hospital. He is an invaluable asset to the hospitals daily management and work stolen diligently to ensure the security of all hospital patrons.

The landlords asserted that the phrase "In addition, he ensures compliance with various codes and regulations related to power engineering, safety policies, and procedures" indicates that their son is expected to follow proper safety procedures when he returns home, which include self-isolating from others he lives with.

The tenants argued that the landlords did not issue the Two Month Notice in good faith. They argued that the landlords issued it as retribution for their successfully contesting the landlords' rent increase. They referred to the decision made following their January 22, 2021 hearing, where the presiding arbitrator wrote:

> I find the Landlords issued the [One Month Notice] because the Tenants filed the Application for Dispute Resolution on File Number 1 disputing a rent increase. The Landlords said as much during the hearing. I asked the Landlords why they waited to issue the Notice and the Landlords said they were giving the Tenants a chance. When asked what the Tenants did further to trigger the Notice, the Landlords referred to the Tenants filing the Application for Dispute Resolution on File Number 1 and disputing the rent increase. The Tenants were entitled to enforce their rights under the *Act*. The Landlords are not permitted to punish the Tenants for doing so and are not permitted to end the tenancy because the Tenants did so. I find this is what the Landlords are attempting to do in issuing the Notice and I cancel it on this basis.

The presiding arbitrator then proceeded to list several other reasons why the One Month Notice was cancelled.

The tenants also argued that there were no health guidelines or policies in place which required a frontline worker from isolating himself from the members of his own household. They dispute that the letter provided by the son's employer requires that he self-isolate at home, apart from the other members of his household.

## Analysis

One Month Notice

The One Month Notice form the basis of the landlords' application to end the tenancy for cause. This notice was cancelled by the arbitrator presiding over the January 22, 2021 hearing. As such, it can no longer form the basis to end the tenancy. I have no authority under the Act to overturn a decision of a prior arbitrator. The prior decision cancelling the One Month Notice is final and binding. As such, the issue of the validity of the One Month Notice is *res judicata,* and I cannot grant the landlords' application.

I dismiss the landlords' application to end the tenancy for cause, and their application to recover their filing fee, without leave to reapply.

Two Month Notice

Section 49 sets out how a tenancy may be ended so that a landlord may use the rental unit. In part, it states:

> 49(1) In this section:
> "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;
>
> (3) 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' son is a "close family member" for the purposes of the Act. So, I must determine if the landlord's son intends in good faith to occupy the rental unit.

RTB Policy Guideline 2A contains a discussion on "good faith":

> B. GOOD FAITH
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> In *Gichuru v Palmar Properties Ltd*., 2011 BCSC 827, the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: *Baumann v. Aarti Investments Ltd*., 2018 BCSC 636.
>
> Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

> If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.
>
> If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.
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> If there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.
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> The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no other ulterior motive.

There is no evidence to suggest that the landlords intend to re-rent the rental unit for a higher monthly rent, that they have ended tenancies in the past to occupy them and then failed to do so, or that there are comparable rental units the landlords' son could move into. Indeed, the tenants did not suggest that the landlords' son did not intend to move into the rental unit. Rather, they suggested that the motive for his doing so was not so that he could self-isolate from his family, but rather because his parents wanted to get rid of the tenants in retaliation for disputing the rent increase.

I must first note that I attach no significance to whether the landlords' son's job requirements or the provincial health standards do or do not require a front-line worker to isolate from those they reside with. The only factor that is required is if the Two Month Notice was issued in good faith. Based on the testimony of the landlords and their son, I find that they honestly believe that the safest course of action for their family in the pandemic is for the landlords' son to isolate himself from his parents, irrespective of what any official guidelines state. They are entitled to hold such a belief. Employment and provincial health guidelines provide a minimum standard that should be followed. Additional precautionary steps can be taken, and likely decrease the chance of an infection spreading.

At no point during the hearing did the landlords state that their reason for issuing the Two Month Notice was issued for any reason other than so that their son could like in the basement suite with his fiancée. The vigorously denied that it was issued as retribution for the tenants' disputing the rent increase. Indeed, MO and her son both testified that the possibility of his moving into the rental unit was raised *before* the rent increase as disputed.

I also note that ending the tenancy to allow their son to move into the rental unit makes little sense, if the landlords' goal was to seek retribution for the rent increase being dispute. With their son moving into the rental unit, they will generate no income from the rental unit, whereas if the tenancy continued, they would generate some income (albeit

not as much as they would have generated should the rent increase have been upheld). It may be the case that the One Month Notice was issued due to the rent increase being cancelled. If the One Month Notice was upheld, the landlords would have been free to re-rent the rental unit at a higher monthly rent. This is not the case with the Two Month Notice. The landlords' son must move into the rental unit, else the landlord be required to a penalty equal to 12 times the amount of monthly rent to the tenants (per section 51(2)). The landlords' son moving into the rental unit decreases the landlords' ability to generate income from the rental unit. As such, I do not find that their inability to impose a rent increase on the tenants was a factor in the landlords' decision to issue the Two Month Notice.

I found the landlords' and their son's testimony to be credible and entirely reasonable. I accept that the sole reason the landlords issued the Two Month Notice is so that their son and his fiancée may move into the rental unit.

As such, I find that the Two Month Notice was issued in good faith and is valid. Accordingly, I dismiss, without leave to reapply, the tenants' application.

Section 55 of the Act states:

> **Order of possession for the landlord**
> 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
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> (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.

I find that the Two Month Notice meets the section 52 form and content requirements. At the hearing, the landlords stated that, if the Two Month Notice was upheld, they seek an order of possession effective June 30, 2021.

As such, I order that the tenants provide the landlord with vacant possession of the rental unit on or before June 30, 2021.

The landlords are reminded of their obligations under section 51 of the Act.

## Conclusion

I dismiss the landlord's application for a monetary order and to retain the security deposit with leave to reapply.

I dismiss the landlord's application for an order of possession for cause and to recover their filing fee without leave to reapply.

I dismiss the tenant's application to cancel the Two Month Notice without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlords by June 30, 2021 at 1:00 pm.

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: April 7, 2021

Residential Tenancy Branch