



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT / OPL, FFL

### Introduction

On March 30, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property, dated March 30, 2021, and to be compensated for the cost of the filing fee.

On April 28, 2021, the Tenants submitted a second Application for Dispute Resolution under the Act to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property, dated April 14, 2021, and to be compensated for the cost of the filing fee.

On May 25, 2021, the Landlords submitted an Application for Dispute Resolution under the Act to request an Order of Possession for the rental unit, and to be compensated for the cost of the filing fee.

The Landlords’ Application was crossed with the Tenants’ Applications and the matters were set for a participatory hearing via conference call.

The Landlords, their legal counsel and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### Preliminary Matter – Withdrawal of Two Month Notice to End Tenancy

The Landlords acknowledged that the first Two Month Notice, dated March 30, 2021, wasn’t served with the relevant paperwork and requested to withdraw the notice at the beginning of the hearing.

All parties agreed that the hearing would proceed based on the Two Month Notice, dated April 14, 2021.

The Landlords acknowledged that they would have to compensate the Tenants for the filing fee in relation to the Tenants’ first Application.

### Issues to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 14, 2021 (the "Two Month Notice"), be cancelled, in accordance with section 49 of the Act?

If the Two Month Notice is not cancelled, should the Landlords receive an Order of Possession, in accordance with section 55 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Should the Landlords be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

### Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The six-month, fixed-term tenancy began on May 1, 2019 and continued as a month-to-month tenancy. The rent is \$1,800.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$900.00 and a pet damage deposit in the amount of \$600.00.

Both parties agreed to the following facts regarding the Two Month Notice:

The Landlords served the Two Month Notice to the Tenants, via registered mail, on April 14, 2021. The move-out date on the Two Month Notice was for June 30, 2021. The reason for ending the tenancy was stated as:

*"All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."*

The Landlords submitted copies of the Two Month Notice, the Tenant Occupied Property-Buyers Notice to Seller for Vacant Possession, dated April 2, 2021 (the "Buyers Notice to Seller") and the Contract of Purchase and Sale and stated that these documents were also provided to the Tenants. The Landlords stated these documents confirm that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlords, in writing, to give the Two

Month Notice to the Tenants because the purchaser intends in good faith to occupy the residential property, including the rental unit.

The Landlords testified that they did not know they needed the written request, the Buyers Notice to Seller, from the purchaser when they served the first Two Month Notice to End Tenancy to the Tenants. Once the Landlords learned this, they received direction from the purchaser, via the Buyers Notice to Seller, that they intended, in good faith, to occupy the rental unit. The Landlords then served the Two Month Notice with the relevant documents to the Tenants.

The Landlords testified that they have placed an offer on a new home, pending the sale of the residential property, that includes the rental unit, and are requesting an Order of Possession as soon as possible.

The Tenants submitted copies of the Contract of Purchase and Sale and noted that the Landlords had agreed to provide vacant possession of the residential property to the buyer.

The Tenants testified that the Landlords had originally served them a Two Month Notice to End Tenancy on March 30, 2021 and had not received direction from the purchaser about their intention to occupy the rental unit. The Tenants submitted a text message between them and the Landlords, dated March 30, 2021, indicating that the Landlord did not have any information from the purchaser about what they are planning to do with the rental unit, only that they wanted vacant possession.

The Tenants stated that the Landlords were acting in bad faith by attempting to end the tenancy based on the requirement to provide vacant possession to the purchaser versus the purchaser intending to occupy the rental unit.

The Tenants submitted a text message between them and the Landlords, dated March 11, 2021, where the Landlords indicated that the purchaser was “buying up the neighbourhood”. The Tenants stated that the text provided evidence that the purchaser may not intend to occupy the rental unit.

The Tenants believe that the Landlords and the purchaser may be acting in bad faith and are requesting that the Two Month Notice be cancelled and for the tenancy to continue.

### Analysis

Section 49(5) of the Act states that a landlord may end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy on the ground that the purchaser is

an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

In this case, the Tenants are questioning the good faith of both the Landlords and the purchaser (I note that the purchaser is not named in any of the Applications). The Tenants have raised the issue of the Landlords' lack of good faith by noting that one of the conditions of the sale of the residential property is that the purchaser will have vacant possession of the residential property by June 30, 2021. The Tenants have submitted that the Landlords, in order to meet the condition of vacant possession, initially attempted to end the tenancy without really knowing the intention of, or receiving direction from, the purchaser, and that this indicates bad faith on the Landlords' part.

I acknowledge the Tenants' concerns that the Landlords may have been acting without full knowledge of the purchaser's intentions to occupy the rental unit when the Landlords served the first Two Month Notice to End Tenancy on March 30, 2021. However, I find that once the Landlords received the Buyer's Notice to Seller, dated April 2, 2021, which is a signed document from the purchaser requesting the Landlords to end the tenancy as the purchaser intends in good faith to occupy the rental unit, the Landlords had an obligation to follow through with this direction, and the subsequent service of the Two Months Notice.

When considering whether the Landlords have ended the tenancy pursuant to section 49(5) of the Act, I look to the following evidentiary documents:

- The Contract of Purchase and Sale which demonstrates that the Landlords have entered into an agreement to sell the residential property and the conditions on which the sale depends have been satisfied.
- The Buyer's Notice to Seller, which demonstrates the purchaser has asked the Landlords, in writing, to give notice to end the tenancy on the ground that the purchaser intends in good faith to occupy the rental unit.
- The Two Month Notice which provides an effective date to end the tenancy on June 30, 2021.

Based on these documents and the Landlords' testimony, I find that the Landlords have established that they have ended the tenancy in accordance with the Act. Specifically, that the Landlords entered into an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the tenancy on the ground that the purchaser intends in good faith to occupy the rental unit once it is vacant, after June 30, 2021.

It is section 49(5)(c) of the Act that specifically provides the third condition required for the Landlord to end the tenancy; the purchaser asks the landlord, in writing, to give notice to end the tenancy on the ground that the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit. As noted above, I have found that the purchaser has asked the Landlord to give notice based on this ground.

The Tenants have raised the issue of the purchaser acting in bad faith and to support this claim, the Tenants submitted a text from the Landlords, dated March 11, 2021, where the Landlords indicated that the purchaser was “buying up the neighbourhood”. From this, the Tenants concluded that the purchaser may not intend in good faith to occupy the rental unit.

I acknowledge that the purchaser was not named in these Applications and not present at this hearing. I find that there is little evidence before me regarding whether the purchaser intends in good faith to occupy the rental unit or not. When considering the Tenants’ concerns whether the purchaser may be acting in bad faith, I weigh the evidentiary value of the text message from March 11, 2021 against the Buyer’s Notice to Seller. Upon review, I find that the text message appears to be informal chat between the Landlords and Tenants and sent prior to any notices to end tenancy. I find the Buyer’s Notice to Seller, is a signed, formal document from the purchaser to the Landlords, indicating, in writing, that the purchaser intends in good faith to occupy the residential property. As such, I find that the written request from the purchaser to the Landlords has more evidentiary weight than the text message. As a result, I find, based on a balance of probabilities, that the purchaser intends in good faith to occupy the residential property.

Furthermore, as mentioned during the hearing and acknowledged by both parties, there is legislation under the Act intended to encourage landlords and purchasers to follow through on the reasons for the end of tenancy. When landlords and/or purchasers fail to do so, they may be held accountable to compensate the Tenants an amount that is twelve times the amount of monthly rent. I reference section 51(2) of the Act for the benefit of all parties.

Based on the testimony and evidence from all parties, I find that the Landlord has proven, on a balance of probabilities, the reasons on which the Two Month Notice is based and as such, I find that Two Month Notice to End Tenancy for Landlord’s Use of

Property, dated April 14, 2021 is valid. As a result, I dismiss the Tenants' Application to cancel the Two Month Notice.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. I find the Two Month Notice, issued by the Landlords on April 14, 2021, complies with the requirements set out in section 49(7) and section 52 of the Act.

I have dismissed the Tenants' Application and found that the Two Month Notice is valid and compliant with the Act. For these reasons and because the Tenants are still occupying the rental unit, I grant the Landlords an Order of Possession.

I find that the Landlords Application has merit and that the Landlords are entitled to recover the cost of the filing fee for this Application for Dispute Resolution; however, based on the agreement for the Landlords to compensate the Tenants for their filing fee in relation to the primary Application, I find that there is no need for any filing fee to be awarded.

### Conclusion

Pursuant to Section 55 of the Act, I grant the Landlords an Order of Possession to be effective two days after notice is 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: June 30, 2021

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Residential Tenancy Branch