



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### 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.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The tenants stated that the notice of hearing package and the submitted documentary evidence was served to the landlord via Canada Post Registered Mail on May 6, 2021. The landlord's agent (the landlord) argued that this package was not received. The tenant referred to a submitted photograph of the envelope using the landlord's mailing address from the 2 months notice and a copy of the submitted Canada Post Registered Mail Tracking label and receipt. The tenants stated that the package was delivered by Canada Post. The landlord re-argued that no such package was received. On this basis a review of the Canada Post online tracking website was used to track the tenants' hearing package. It shows that the package was received by Canada Post on May 6, 2021 and delivered on May 7, 2021. On this basis, I find that the landlord was served with the notice of hearing package and the submitted documentary evidence and is deemed served as per section 90 of the Act. The landlord confirmed that no documentary evidence was submitted.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the landlord served the tenant with a 2 month notice to end tenancy for landlord's use of property dated April 12, 2021 which sets out an effective end of tenancy date of June 30, 2021. The reason selected on the notice is:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that spouse).

The landlord or the landlord's spouse.

The tenants provided written details which states:

We are requesting a longer time to move out (up to six months) as my 80 year old father-in-law is living with us, now stuck not able to join his wife in their country of residence due to COVID. We cannot move out until he is able to travel. For this to happen his wife needs to come (she is also stuck due to travel restrictions) and take him with her as he is unable to travel alone due to his poor health condition.  
[reproduced as written]

The tenants provided direct testimony that they seek additional time to end the tenancy. Although the tenants stated this as their only reason, the tenants also argued that the landlord will not occupy the rental unit. No other details were provided by the tenants.

The landlord's agent stated that the landlord will occupy the rental unit.

### Analysis

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

In this case, both parties have confirmed that the landlord served the tenants' with the 2 month notice dated April 12, 2021 displaying an effective end of tenancy date of June 30, 2021. I note that the 2 months notice effective date is corrected to July 31, 2021.

Despite the tenants filing the application for dispute of the 2 months notice the tenants request in doing so was for additional time to move out. On this basis, I find that the 2 months notice is valid.

The tenants also argued that they believe the landlord will not occupy the rental unit but failed to provide any basis for this belief. The landlord provided affirmed testimony that it is the landlord's intent to move-in and occupy the property. On this basis, I find on a balance of probabilities that the landlord will in good faith occupy the rental unit. The 2 months notice dated April 12, 2021 is upheld. The tenants' application to cancel the 2 months notice is dismissed. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenants.

### Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: August 27, 2021