



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on she does not recall how the Dispute Resolution Package was served to the Landlord. The Agent for the Landlord stated that the Dispute Resolution Package was left in the Landlord's mailbox in July of 2021. On the basis of the testimony of the Agent for the Landlord, I accept that these documents were served to the Landlord in July of 2021.

In June, July, and September of 2021 the Tenants submitted evidence to the Residential Tenancy Branch. The Tenant stated that all of this evidence was left in the Landlord's mailbox approximately 10 days ago. The Agent for the Landlord stated that the Tenants' evidence was received on October 07, 2021. The Agent for the Landlord declined the opportunity for an adjournment for the purposes of having more time to consider the Tenants' evidence.

As the Landlord received the evidence and did not wish an adjournment for more time to consider the evidence, the Tenants' evidence was accepted as evidence for these proceedings.

On October 11, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was placed in the Tenants' mailbox on October 12, 2021. The Tenant acknowledged receiving this

evidence. As the evidence was served to the Tenants within 5 days of receiving evidence from the Tenants, the Landlord's evidence was accepted as evidence for these proceedings. The Tenants were not given the opportunity for an adjournment for the purposes of considering the Landlord's evidence, as the delay in being served with the Landlord's evidence was the direct result of the Tenants failing to serve evidence in a timely manner.

On October 13, 2021 the Tenants submitted evidence to the Residential Tenancy Branch. As this is simply a written submission of testimony that can be provided at the hearing by the Tenant, and it was not served to the Landlord in accordance with timelines established by the Residential Tenancy Branch Rules of Procedure, this document was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside or cancelled?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began on July 01, 2011;
- rent is due by the third day of each month;
- on May 30, 2021 the Tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the tenancy was ending because the rental unit would be occupied by the parents of the Landlord or the Landlord's spouse;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by August 01, 2021;

- there was a hearing on May 07, 2021 to consider the Tenant's application to cancel a different Two Month Notice to End Tenancy for Landlord's Use;
- at the hearing on May 07, 2021 it was determined that the previous Two Month Notice to End Tenancy for Landlord's Use had not been signed by the Landlord.

The Landlord submitted affidavits in which the Landlord's mother and the Landlord's father each declare their intent to move into the rental unit.

The Tenant stated that:

- she does not believe that the Landlord's parents will be moving into the rental unit;
- on January 30, 2021 the Landlord told her that her sister had recently sold her home and that her sister/sister's children intended to live in the rental unit for one year while their new home is being built;
- she did not misunderstand the conversation on January 30, 2021; and
- she is over 60 years of age and she suffers from chronic pain.

The Agent for the Landlord stated that:

- the Landlord is her mother;
- the Landlord's mother and father wish to move into the rental unit;
- the Landlord's mother and father are currently living with the Landlord;
- the Tenant misunderstood what her mother told her in regard to who would be moving into the unit;
- her mother told the Tenant that the Landlord's parents were previously living with the Landlord's sister but they could not continue to do so, as the sister had sold her home; and
- it is hard from the Landlord's parents to live with the Landlord, as the Landlord runs a business out of their residence.

The Landlord stated that she did not tell the Tenant that her sister would be moving into the rental unit.

The Witness for the Landlord stated that:

- he is the Landlord's brother;
- his parents have previously lived in the rental unit;
- his parents wish to move back into the rental unit, as it will allow them an opportunity to garden and it is close to his sister's home.

Analysis:

Section 49(3) of the *Residential Tenancy Act (Act)* permits a landlord 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.

On the basis of the undisputed evidence, I find that on May 30, 2021 the Landlord served the Tenant with proper notice of the Landlord's intent to end the tenancy pursuant to section 49(3) of the *Act*.

I find that the Landlord has submitted sufficient evidence to establish grounds to end the tenancy pursuant to section 49(3) of the *Act*. In reaching this conclusion I was influenced by the following evidence, which I find to be credible and compelling:

- an affidavit from the Landlord's mother, who declares she intends to move into the rental unit;
- an affidavit from the Landlord's father, who declares she intends to move into the rental unit;
- the Agent for the Landlord's testimony that the Landlord's father and mother intend to move into the rental unit; and
- the Witness for the Landlord's testimony that the Landlord's father and mother intend to move into the rental unit.

In adjudicating this matter, I have placed limited weight on the Tenant's testimony that the Landlord told her that the Landlord's sister would be moving into the unit. I placed limited weight on this testimony because the Landlord denies the submission, and the Tenant has submitted no corroborating evidence.

Although I accept that the Tenant believes she was told the Landlord's sister was moving into the rental unit, I find it entirely possible that she misunderstood the information provided by the Landlord. In reaching this conclusion I was influenced by the fact English is not the Landlord's first language, which may have contributed to a misunderstanding.

In adjudicating this matter, I have placed no weight on the Tenant's testimony that she is over 60 years of age and she suffers from chronic pain. Although I sympathize with the Tenant, it does not negate the Landlord's right to end the tenancy in these circumstances.

As the Landlord has established grounds to end this tenancy pursuant to section 49(3) of the *Act*, I dismiss the Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their application to recover the fee paid to file this Application.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, I must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act*, and I, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the Tenants' application to cancel this Two Month Notice to End Tenancy for Landlord's Use and the Two Month Notice to End Tenancy for Landlord's Use complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession pursuant to section 55(1) of the *Act*.

Conclusion:

The Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on October 31, 2021. This Order may be served on the Tenants, filed with 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: October 14, 2021

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Residential Tenancy Branch