



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened as a result of two joined applications from three Tenants, K.R., R.R., and M.C., pursuant to the *Residential Tenancy Act* (“Act”), seeking the cancellation of two, Two Month Notices to End Tenancy for Landlord’s Use both dated May 18, 2021 (“Two Month Notices”). The Tenants also applied to recover the \$100.00 cost of their respective application filing fees.

At the onset of the hearing, the Parties in attendance agreed that M.C. was withdrawing her claim, as she was moving out on September 30, 2021, further to having given the Landlords a 30-day notice to end the tenancy. M.C. did not attend the hearing, which lasted for over an hour. As such, I solely considered the application of the Tenants, K.R. and R.R. (“Application”).

The Tenants, K.R. and R.R., and their legal counsel, S.N. (“Counsel”), and the Landlords, R.H., S.H., M.F., and D.F. appeared at the teleconference hearing and gave affirmed testimony. The Landlords confirmed that R.H. would be their spokesperson.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. All Parties said they had received the applications and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters - Joiner

The Parties provided their respective email addresses at the outset of the hearing, and they confirmed their understanding that the Decision would be emailed to both Parties, and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

#### Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to the recovery of their \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on August 19, 2018, with a monthly rent of \$3,700.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,812.50, and no pet damage deposit. The Landlord confirmed that they still hold the security deposit for this tenancy.

The Two Month Notice was signed and dated May 18, 2021, it has the rental unit address, it was served via registered mail on May 18, 2021, with an effective vacancy date of July 31, 2021, and it was served on the grounds that 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 individual's spouse). In this case, the Landlords specified that they will occupy the rental units upon being vacated by the Tenants.

In the hearing, the Landlords said that S.H. and M.F. are sisters and that the couples want to raise their families together. They said that S.H. and R.H. have outgrown their residence, which is 914 square feet in size, versus the rental unit, which is 1500 square feet in size. Similarly, M.F. and D.F. live in a residence that is 943 square feet, whereas the duplex into which they intend to move is “about 50% bigger,” according to the Landlords.

In the hearing, the Landlords said:

Our Notices should be upheld, as they were delivered in good faith - and with an unequivocal good faith intention to occupy the entire property. We are being evicted at [our current address]. In 2021 we were notified that our [residence] will be demolished for redevelopment...

The Landlords pointed to exhibits they had submitted to the RTB and served to the Tenants. In Exhibit 5, the Landlords submitted an undated letter from their landlord, in which the landlord explained to tenants that the owners were applying to the City to redevelop the property. This Exhibit also contains an email the Landlords received from their landlord dated April 8, 2021. This email was entitled: “Tenant Relocation Plan Information”, and gave the tenants (the Landlords before me) an explanation about the compensation they would receive for vacating the residence.

The Landlords said that on September 1, 2021, M.C. gave them a Tenant’s 30 Day Notice to End the Tenancy with an effective vacancy date of September 30, 2021. They said that M.C. withheld her final month’s rent, and that the Parties scheduled a condition inspection of the rental unit for September 30, 2021. As such, the Landlords, R.H. and S.H. have booked a moving company for this unit.

R.H. Said:

[M.] and [D.] are also in an unsuitable housing situation. They outgrew their townhome and had twins during the pandemic. The [rental unit] is 50% bigger, and they have the twins, they work from home, they want a backyard, and we all want to live with the family next to us.

The Landlords submitted Exhibit 4, which is a sworn affidavit of their real estate agent, Z.M. (“Affidavit”), which they said offers greater detail of the townhome listing of M.F. and D.F. This Affidavit contains the following statements:

3. As the real estate advisor to [D.], [M.], [R.], and [S.], I assisted with their search for residential properties to purchase. At all times during this process, the stated intent of [D.], [M.], [R.], and [S.], respectively, was to find a home to purchase in which to live. At no point was there a discussion of purchasing property for investment purposes.

...

7. On February 8, 2021, [D.] emailed me and instructed me to begin searching for a property for [D.] and [M.] to purchase along with [R.] and [S.], and where they could all reside. [D.] advised that he, [M.], [R.], and [S.] were particularly interested in purchasing both sides of a duplex, or semi-detached home.

In the Affidavit, Z.M. explained that he showed the Landlords the residential property before me in this proceeding, and that the Landlords offered to purchase both units from the owner, and that their offer was accepted. Z.M. also said: "Each unit is three bedrooms, two bathrooms, and is 1471 square feet. Each unit has a fenced backyard."

The Landlords submitted Exhibit 2, which is a solemn declaration dated May 12, 2021, and executed by each of the four Landlords ("Solemn Declaration"), regarding the residential property containing the rental units before me. This Solemn Declaration included the following statements:

...

4. It is our intention to serve notice to end tenancy to all tenants of the Property when we are the owners of that Property as soon as reasonably possible;

5. It is our intention to occupy the Property as our principal residence as soon as reasonably possible.

...

AND we make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

The Landlords said that the purchase/sale agreement for the sale of the residential property from the former owner has "standard boiler plate language". They noted that the change in ownership preserved the tenancies, but the Landlords said: "Neither the purchase agreement nor anything else places limits on our rights to occupy the property after giving the appropriate notice." They also said that they are incurring costs every

week that they are not able to move into the residential property. They noted that they are two months past the effective vacancy date on the Two Month Notice.

In the hearing, Counsel explained the Tenants' position, as follows:

I propose to do the following; the evidence of the tenant is straightforward. They have a valid tenancy agreement; it was the previous owner's intention to sell to an investor and the current Landlords indicated this was their intention to purchase it. However, the sales contract is not in evidence.

Counsel referred me to a statement of the previous landlord, [R.D.]. In this statement, [R.D.] indicates that when she and her husband were trying to sell the residential property, that they asked their realtor to ask buyers' agents if the prospective buyers were investors or looking to occupy the residences, "...as we preferred that any prospective purchasers would assume the tenancies upon purchasing the Duplex"

Counsel directed my attention to the following paragraphs in R.D.'s statement:

We received several offers for the Duplex. [Our realtor] advised me that he had enquired of all of the prospective purchasers' agents whether the purchasers were investors, and was told that they were investors. We accepted an offer to purchase from [R.H.], [S.C.], [D.F.] and [M.F.] (the "**Purchasers**"). The Contract of Purchase and Sale stated that 'The Buyers acknowledge and accept that upon completion they shall assume the existing tenancies as of the date of this Contract for both [Duplex addresses]'. Copies of the leases were provided to the Purchasers.

The Purchasers did not request that we issue notices to end the tenancies prior to completion of the sale of the Duplex. .

[emphasis in original]

Counsel then directed my attention to the Landlords' Exhibit 4 at paragraph 13 of Z.M.'s Affidavit. Paragraph 13 states:

13. During the negotiations for the Purchase of the Property, I was informed that the vendor was unwilling to provide vacant possession of the Property. For that reason, [D.], [M.], [R.]. and [S.] agreed to assume the month-to-month tenancies in place at the Property on the completion date. [D.], [M.], [R.]. and [S.] have

informed me that they have provided a Landlord Two Month Notice to End Tenancy to the tenants at the Property.

In paragraph 14 of the Affidavit, Z.M. states that he was informed by [D.], [M.], [R.], and [S.] that [M.] and [D.] plan to reside in one unit at the residential property as their principal residence, and that [R.] and [S.] plan to reside in the other unit as their principal residence.

Counsel also noted paragraph 3 of the Landlords' Exhibit 2, the solemn declaration, in which the Landlords declared that "at the time of registration we expect the Property to be tenanted".

Counsel asked the Tenants about speaking to their former landlord about the sale of the Property. K.R. said that in February 2021, the former landlord told him that she was seeking investors for the property, so that they would remain as Tenants.

Counsel also asked questions of the Landlords in the hearing, asking if they had read the contract of purchase and sale of the residential property. The Landlords said they had read it. Counsel asked if this contract had required vacant possession. R.H. said that he did not have the contract in front of him, but that the contract did not speak to vacant possession.

Counsel said that clause five of standard real estate contracts for sale sets out whether the parties expect the property to have vacant possession. She asked the Landlords if they remembered such a clause in their contract. R.H. said that the contract did contain standard language that the tenancy would transfer to the new owners upon completion.

Counsel asked the R.H. about their need to move into the residential property, given the status of their current residences. The Landlords said that their current residence is within a development permit approval process, and that they anticipate receiving a Four Month Notice to End the Tenancy at any time.

Counsel asked the other Landlords, D.F. and M.F., if they have sold the property in which they live, to which the Landlords said they have taken the initial steps to list the property. They said, "However, we are in a holding pattern, because of the uncertainty from this dispute. We weren't sure when could move in, so it's in a holding pattern."

Counsel argued that section 49 (3) of the Act is at the heart of this dispute. She said that according to this section, a landlord may only end a tenancy if the Landlord intends

in good faith to occupy the residential property. Counsel said: “You could have asked the previous owner to give the Tenants a notice to end the tenancy.” Counsel then read from section 49 (5) of the Act, which subsection states:

**49 (5)** A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
  - (i) 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;
  - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Counsel then reiterated that the Landlords had not asked the former owner/landlord to issue a notice to end the tenancy, pursuant to this section. Counsel said that the Tenants argue that R.D.’s statement indicates her intention to sell to someone who would keep the tenancies in place. Counsel argued that the former landlord is not associated with this dispute, and therefore, that her statement ought to be preferred to the Landlord’s statement that they also intended to move in. Counsel stated:

By failing to put the contract of purchase and sale into evidence, it calls it into question. This contract states that they will assume the tenancies. It is contradictory to issue eviction notices in good faith.

[S.H.] and [R.H.] have no requirement to vacate [their current rental unit, as they have not received a Four Month Notice yet. [D.F.] and [M.F.] have not listed their property for sale – they didn’t do this prior to issuing the Notice.

The relevant point in time was when the [Two Month] Notice was issued. The Landlords were party to a binding contract. This is a binding contract setting out their intentions. They could have asked for vacant possession, but they did not do so.

The remedies the Tenants seek is compensation of one month's rent, and cancellation of the Two Month Notice. If cancelled and if they wish to reissue that, it should have a move out date of November 30, 2021. Also, don't issue an order of possession, because if you do so, we will be seeking a stay on that writ of possession.

In terms of Counsel's request for remedies in this proceeding, I remind Counsel that this is the Landlords' Application, not the Tenants', therefore I am not in a position to grant the Tenants any monetary relief in this matter.

I asked Counsel what prohibits the Landlords from changing their minds about their intention for the residential property. She said:

But was the notice issued in good faith? They made a representation in a legally binding document that they would be taking the property subject to the tenancies. And as the contract is not in evidence, we ask you to draw an adverse inference on that basis.

R.H. responded to Counsel's submissions, as follows:

In our view she has mischaracterized [R.D.'s] statement. [R.D.] writes that the contract states that the buyers acknowledge and accept the tenancies for both [rental units]. As I have said, it was communicated to us that the seller was unwilling to issue notices – that she would not participate in that process. We would have to initiate that ourselves. We question giving weight to [R.D.'s] unsworn statement of what she was told by her agent.

She could have signed interim leases, could have requested a clause about tenancies staying in place, but she did not. They don't place limitations, but simply preserve that the tenancy transfers with the sale, which happens in accord with the *Residential Tenancy Act*. We served the notices in accordance with the Act.

[R.D.] writes in her unsworn statement that she was seeking the best possible price for the property. She said in her listing – 'perfect for moving in to'.

We did none of the things the Applicants are saying. Our purchase agreement contains no language that places any limitations on our rights as owners. . . there's nothing to infer from our actions, that we misled anyone. From our agent



stating that he also made no statement to anyone that we had any other intention, but to occupy it for ourselves. We always intended this - all the evidence supports that we're just looking for a speedy resolution, for the Notices to be upheld, and for a lawful writ of possession. Our intentions are clear.

They say at issue is whether the Notices were issued in good faith. We clearly have a good faith basis. We are not subject to a four month notice of eviction. But the letter clearly show that [S.] and I will be evicted from our property – in one month, four months. [M.] and [D.] have a 900 square foot town home. That they haven't listed it makes complete sense. – how can we list if we don't know when we can move in. They have said they will seek judicial review, if the proceeding doesn't go their way. [M.] and [D.] want a place to live – but there's no clear date on when they can move into the property.

[S.] and I have booked movers and will be in there in no time, and we hope our brother and sister and niece and nephew will be close by soon.

Counsel's last statements were as follows:

I'd like to clarify that any judicial review applications are subject to settlement discussions. My clients have a place to move into, but much like the Landlords' situation – they are waiting for permits from the City. Due to Covid, the City takes much longer to process these permits, so they are not trying to drag out this process. They wish to move as soon as possible, but have no place to go at this time. As a bit of background context to this dispute, they have three young children. We agree that the test was whether the notice was issued in good faith. We submit that there was a contrary intention.

The Landlords' last statements were as follows:

We've been offering September 30<sup>th</sup> – see Exhibit 8 – since way back on July 6. They initially demanded double the compensation, and didn't respond to any offers. Now this new idea of a new effective date of November 30<sup>th</sup>? We're incurring costs, as well. We've missed the summer market of selling [M. and D.'s] home. We're paying to store the items for our new homes; we plead that the Arbitrator arrives at a decision as soon as possible. November 30<sup>th</sup> is unworkable for us.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

If a tenant files an application to dispute an eviction notice, the landlord bears the burden to prove on a balance of probabilities the grounds for issuing the notice. In the case before me, the Landlord must show that the rental unit/residential property must be vacated, because the Landlord and/or a close family member intends in good faith to occupy the rental unit.

I find that the essence of the Tenants' argument is that because their previous landlord intended to, and tried to sell the residential property to an investor, rather than someone who wanted to occupy the suites, the buyers should not be allowed to move into the residential property that they just purchased. However, I find that the Tenants have not provided sufficient authority on this basis for me to cancel the Two Month Notice and to have the tenancies continue.

While the Landlords did not utilize section 49 (5) and ask the selling landlord in writing to end the tenancy, I find there is no authority before me prohibiting the Landlords from giving the Tenants notice to end the tenancy, pursuant to section 49 (3) of the Act.

**49 (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.

I find that the Landlords have provided sufficient evidence to meet their burden of proof on a balance of probabilities. I find the Tenants' evidence to be insufficient in the face of the Landlords' compelling evidence, not that the Tenants have a burden to meet.

As a result, I find that the Landlords have shown on a balance of probabilities that the tenancy should end for the reason provided on the Two Month Notice. Further, I find that the Two Month Notice is consistent with section 52 of the Act, as to form and content. As a result, I confirm the validity of the Two Month Notice. Accordingly, I find the Tenants are unsuccessful in their Applications and I dismiss their Applications wholly without leave to reapply.

Given that the Tenants are unsuccessful in their Applications, I decline to award them recovery of the \$100.00 Application filing fees.

Pursuant to section 55 of the Act, I grant the Landlords an Order of Possession for the residential property, effective two days after service on the Tenants.

### Conclusion

The Tenants' Applications to cancel the Two Month Notice are dismissed without leave to reapply, as the Landlords provided sufficient evidence to meet their burden of proof in this matter on a balance of probabilities. The Tenants' applications are dismissed wholly without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenants. The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 05, 2021

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Residential Tenancy Branch