



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenants' Application: **CNL, OLC**

Landlord's Application: **MNDCL-S, OPL, FFL**

### **Introduction**

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to Sections 49 and 62 of the Act; and,
2. An order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act.

This hearing also dealt with the Landlord's cross application for:

1. A Monetary Order to compensate for a monetary loss – still holding the security deposit pursuant to Sections 38 and 67 of the Act;
2. An Order of Possession pursuant to Section 55 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. Both Tenants, IH and BI, and the Landlord's Agent, TV, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, to question the other party, and make submissions. The parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings.

The Tenants confirmed they personally served the Landlord with the Notice of Dispute Resolution Proceeding package including all evidence for this hearing on a day between

July 21-24, 2021 (the “T-NoDRP package”). The Landlord confirmed receipt of the T-NoDRP package, although could not remember the exact day. I find that the Landlord was personally served with the documents for this hearing on July 21-24, 2021, in accordance with Section 89(1)(a) of the Act.

TV served the Tenants with their Notice of Dispute Resolution Proceeding package including all evidence by registered mail on September 24, 2021 (the “L-NoDRP package”). TV referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenants confirmed receipt of the L-NoDRP package although could not remember the exact day. I find that the Tenants were deemed served with the documents for this hearing on September 29, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

For the Tenants:

1. Are the Tenants entitled to cancellation of the Landlord’s Two Month Notice?
2. Are the Tenants entitled to an order for the Landlord to comply with the Act, regulations and tenancy agreement?

For the Landlord:

1. Is the Landlord entitled to a Monetary Order to compensate for a monetary loss?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to recovery of the application filing fee?

### 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 arguments are reproduced here. The principal aspects of the parties’ claims and my findings around each are set out below.

This tenancy began as a fixed tenancy on July 1, 2020 ending on June 30, 2021. The Tenants were to vacate at the end of this tenancy for the reason of Landlord’s use of property. The monthly rent is \$2,695.00 payable on the first day of each month. A security deposit of \$1,347.50 was collected at the start of the tenancy and is still held by the Landlord.

TV served the Two Month Notice by posting the form on the Tenants' door on June 21, 2021. The Two Month Notice stated the reason why the Landlord was ending the tenancy was because all the conditions for the sale of the rental unit have been satisfied and the buyers have asked the Landlord, in writing, to give the Two Month Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The effective date of the Two Month Notice was August 31, 2021. The Tenants confirmed they received the Two Month Notice.

TV testified that the property has sold, and the new owners are waiting to move into the home. TV provided the requisite form to the Tenants specifying that the buyers of the home requested that the sellers give notice to the Tenants that they require vacant possession of the rental unit because they intend in good faith to occupy the property. This document was submitted into the Landlord's documentary evidence package.

The Tenants submitted that the Landlord agreed to a six-month extension of their tenancy to assist the Tenants to secure housing while they waited for the completion of a townhouse they bought. The Tenants submitted email correspondence into their documentary evidence between a property manager where they state confirmation of the six-month extension was granted.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49(5) of the Act is the relevant part of the legislation in this application. It states:

#### ***Landlord's notice: landlord's use of property***

- 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;*

...

- (7) *A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.*
- (8) *A tenant may dispute*
  - (a) *a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or*

...

TV has provided all the documentary evidence to satisfy me that an agreement to purchase the rental property has been entered into by the Landlord. TV has also provided written notice that the new buyers want vacant possession of the rental unit as they intend in good faith to occupy the rental property. I find that the Landlord entered into an agreement in good faith to sell the rental property, and that the buyers of the rental property presented the requisite document seeking vacant possession of the rental property.

The Tenants' evidentiary submission that the Landlord agreed to a six-month extension on their tenancy does not satisfy me, on a balance of probabilities, that a six-month extension was granted. The correspondence appears more to be a conversation that this extra time was needed, but no definitive proof was provided that it was granted from the Landlord. I find that the Landlord did not grant a six-month extension to the Tenants allowing them more time to remain in the rental unit.

I find the Landlord's Two Month Notice complies with Section 52 of the Act and does contain the name and address of the buyer who asked the Landlord to give the Two Month Notice.

The Tenants applied for dispute resolution on July 5, 2021 as was their right, before the 15-day time limit specified in the Act that was required for this application. I find they filed their dispute resolution application in time. Further, on account of this, I do not find that the Tenants are responsible for the additional costs the Landlord incurred to move the possession date of the rental property. I dismiss the Landlord's application for a Monetary Order in this regard without leave to re-apply.

I accept TV's testimony that the property has been sold and the new buyers are waiting to move in. As all the conditions for the sale of the property are satisfied, and the request of the buyers for vacant possession of the property was properly made, I find that the Landlord's Two Month Notice is upheld, and I dismiss the Tenants' application to cancel the Two Month Notice without leave to re-apply.

As the Tenant was not successful in their application, I must now consider if the Landlord is entitled to an Order of Possession.

Section 55(1) of the Act reads as follows:

- 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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 submitted into documentary evidence complies with Section 52 of the Act and I uphold the Landlord's Two Month Notice. I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

As this tenancy has ended, I decline to make any orders on the Landlord to comply with the Act, regulations and tenancy agreement. Finally, as the Landlord was successful in their claim, they are entitled to recovery of the filing fee. Pursuant to Section 38(4)(b), I order that the \$100.00 filing fee may be deducted from the security deposit held by the Landlord.

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession pursuant to Section 55(1) of the Act, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

The Landlord may retain \$100.00 from the Tenants' security deposit to recover their application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 17, 2021

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Residential Tenancy Branch