



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HomeLife Advantage Realty Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **FFT, CNL, RR, RP, LRE**

### **Introduction**

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

- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- 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;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The individual respondent NT represented themselves with assistance. MH attended as agent of both the individual and corporate landlords.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application must be related to each other and the Arbitrator may dismiss unrelated disputed with or without leave to reapply. In the present case, I find that the portions of the tenants' application pertaining to a reduction of rent, an order for repairs and to set conditions on the landlords' right to enter the rental property are not sufficiently related to the issue of the 2 Month Notice to End Tenancy. Therefore, I sever and dismiss these portions of the tenants' application with leave to reapply.

### Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

### 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 claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy originally began on July 1, 2017. Monthly rent is \$3,100.00 payable on the first of each month. A security deposit of \$1,550.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a single detached home. The registered owner of the property is the individual respondent NT.

A 2 Month Notice to End Tenancy for Landlord's Use dated July 13, 2021 was served on the tenants by posting on the rental unit door on or about that date. The tenants confirmed receipt of the notice and a copy was submitted into evidence. The notice is signed by the agent MH, lists the corporate respondent as the landlord and indicates the reason for the tenancy to end is that the landlord or landlord's spouse will occupy the rental unit.

The landlords gave evidence that the rental unit will be occupied by the individual respondent NT and their family. The landlord NT testified that they were residing in another country when the tenancy started but have moved to British Columbia as of October 2021 and seek to reside in the rental unit. NT said that they have a child enrolled in school in the community and are currently forced to stay with friends until the rental unit is available. The landlords submitted printouts of their flight itinerary showing

their arrival in the province on October 6, 2021 and correspondence from Immigration Services Canada to the landlord's spouse indicating that their application for residence is being processed.

### Analysis

Pursuant to section 49(8)(a) a tenant may dispute a Notice to End Tenancy for Landlord's Use by filing an application for dispute resolution within 15 days of receipt of the notice. In the present case the tenants confirmed receipt of the 2 Month Notice on or about July 13, 2021 and filed their application to dispute the notice on July 23, 2021. Therefore, I find the tenants were within the timeline provided.

When a tenant disputes a notice the onus shifts to the landlord, to demonstrate on a balance of probabilities that the tenancy should end for the reasons provided on the notice.

The landlords submit that the property owner NT and their family intend to reside in the rental unit. NT provided some testimony that they immigrated in October 2021 with the intention of occupying the rental unit. They made some reference to a school age child who they claim is enrolled in school in the area but provided little documentary evidence to support their submissions.

Taken in its entirety I find the submissions of the landlords to be weak, not supported in the documentary materials and unpersuasive. NT provided little cogent information on the reason for their move to the province, why this property is preferable to other properties owned or their present accommodations. The landlord was assisted by an interpreter and directly questioned as to the reasons for the issuance of the 2 Month Notice multiple times. Despite being provided repeated opportunities to make detailed submissions the landlord NT declined to do so, instead simply repeating that they want possession of the rental unit.

The landlords' agent MH provided some assistance giving clear and consistent testimony that the issuance of the 2 Month Notice was not motivated by other, previous disputes with the tenants. Unfortunately, MH as an employee of the corporate landlord had limited knowledge of NT's personal details and they were unable to provide additional information on NT's circumstances which led to the issuance of the notice.

I find that I am not satisfied with the limited evidence before me that the landlord intends to occupy the rental unit. I find the evidence of flight itineraries and the landlord's spouse having an active application with Immigration Services is insufficient to establish that they intend to occupy the rental unit. The landlord failed to provide information regarding why the rental property is appropriate for their family, why they are seeking to occupy the property at this time or why alternate accommodations are inadequate.

I find that given the paucity of evidentiary materials I am not satisfied on a balance of probabilities that the landlord intends to occupy the rental unit as set forth in the notice. Consequently, I allow the tenants' application and cancel the 2 Month Notice. The notice is of no further force or effect. This tenancy continues until ended in accordance with the Act.

As the tenants were successful in their application they are entitled to recover the filing fee from the landlord. As this tenancy is continuing the tenants may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

### Conclusion

The 2 Month Notice of July 13, 2021 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenants may make a one-time deduction of \$100.00 from their next scheduled rent payment.

The balance of the tenant's application is dismissed with leave to reapply.

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: November 25, 2021

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Residential Tenancy Branch