



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL-MT

### Introduction

The Tenants apply to cancel a Two-Month Notice to End Tenancy dated September 28, 2021 (the “Two-Month Notice”) pursuant to s. 49 of the *Residential Tenancy Act* (the “Act”). They also ask for more time to dispute the Two-Month Notice pursuant to s. 66 of the *Act*.

R.C. and S.C. appeared on their own behalf as Tenants. S.W. appeared on her own behalf as Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord advised that she personally served the Tenants with the Two-Month Notice on September 28, 2021. The Tenants acknowledge receiving the Two-Month Notice on September 28, 2021. I find that the Two-Month Notice was served on the Tenants in accordance with s. 88 of the *Act* and received by the Tenants on September 28, 2021.

The Tenants advised that they served the Notice of Dispute Resolution on the Landlord by way of registered mail sent on November 5, 2021. The Landlord acknowledges receipt of the Notice of Dispute Resolution. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Landlord received the Notice of Dispute Resolution on November 10, 2021.

The Tenants further advised that they served their evidence on the Landlord by way of registered mail sent on November 29, 2021. The Landlord acknowledges receipt of the

Tenants evidence. I find that the Tenants served their evidence in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Landlord to have received the Tenants evidence on December 14, 2021.

The Landlord advises that she served her evidence on the Tenants by personally serving them on November 28, 2021. The Tenants acknowledge receipt of the Landlord's evidence on November 28, 2021. I find that the Landlord's evidence was served in accordance with s. 89 of the *Act* and received by the Tenants on November 28, 2021.

#### Issue(s) to be Decided

- 1) Should the Tenants be granted more time to dispute the Two-Month Notice?
- 2) If so, should the Two-Month Notice be cancelled?
- 3) Is the Landlord entitled to an order for possession?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

There is no written tenancy agreement. The subject residential property, which is a condo, was recently purchased by the Landlord. The Landlord confirms that her offer to purchase the residential property was accepted on September 3, 2021, the sale closed on September 28, 2021, and she took possession on October 1, 2021.

The Tenants confirmed they began to live within the rental unit on September 15, 2020 and say the previous owner was a friend. The Tenants indicate that they moved into the rental unit after selling their previous home. It had been their intention to live within the rental unit for a brief period while they were looking to purchase another home.

The Tenants say that there had been an issue with respect to what rent was to be paid to their previous landlord. They say they attempted to reach an understanding on rent payments but that this was rebuffed by the previous owner. It appears they resided within the rental unit for several months without paying any rent at all. No security deposit was ever paid to the previous owner.

The Tenants indicate that they reached an accord with the previous owner in August 2021 to pay \$600.00 per month in rent and paid a lump sum for several months in past rent to the previous owner. That lump sum was paid on September 4, 2021, the day after the Landlord's offer for the residential property was accepted.

The Tenants say rent was \$600.00 due on the first of each month and that this has been paid to the Landlord. The Landlord agrees that this was the rent that appears to have been paid to the previous owner and that it has been what she has received since taking possession of the residential property.

The Landlord says that she purchased the residential property with the intention to move in and sold her prior residence. The Landlord says she owns no other property.

The Landlord and the Tenants met on September 16, 2021 to discuss their future relationship. The Landlord indicates that she offered to extend their tenancy for 6-months to provide the Tenants more time to find another place to either rent or purchase. The Landlord says that there would be no penalty should they leave sooner. The Landlord says there was an issue with respect to rent. Both parties acknowledged at the hearing that \$600.00 is below market rates. The Landlord wished to increase the rent and the Tenants insisted that rent not be increased beyond the cap imposed by the Regulations. No agreement was made with respect to the issue of the rent increase and remained at \$600.00. In the Tenants telling, they left the meeting of September 16, 2021 with the understanding that the tenancy would continue for 6 months.

The Landlord served the Two-Month Notice on September 28, 2021. The Tenants indicate that they were shocked when they received the notice following their understanding of the September 16, 2021 meeting. The Tenants say this shock prevented them from filing their application to dispute the Two-Month Notice and resolved to file their dispute when they did so that they could obtain more time to find alternate accommodations.

The Tenants indicate that R.C. moved out of the rental unit on November 26, 2021 following the breakdown of their relationship.

The Landlord says that she issued the Two-Month Notice so that she could live there. She says she's currently living with her partner in a rural property. The Landlord says she is of advanced age and purchased the residential property to be closer to services and amenities.

The Tenants argue that the issue of the Landlord moving in only became active after they refused to agree to rent increase beyond that imposed by the Regulations.

### Analysis

The Tenants apply for more time to dispute the Two-Month Notice and to cancel the Two-Month Notice.

Pursuant to s. 66 of the *Act*, the director may extend a time limit established under the *Act* only under exceptional circumstances. Policy Guideline #36 provides the following guidance with respect to "exceptional circumstances":

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

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The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim

- the party has brought the application as soon as practical under the circumstances.

Pursuant to s. 49(8)(a), the Tenant had 15-days after receiving it to dispute the notice by filing an application with the Residential Tenancy Branch. Indeed, the top of the Two-Month Notice indicates the following:

### **HOW TO DISPUTE THIS NOTICE**

You have the right to dispute this Notice **within 15 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

The Tenants' application was received by the Residential Tenancy Branch on November 3, 2021 and their filing fee paid on November 1, 2021. I find that their application was made on November 3, 2021 in accordance with Rule 2.6 of the Rules of Procedure. Here, the Tenant failed to dispute the notice in the timeframe set out under the *Act*. They acknowledge receipt of the Two-Month Notice on September 28, 2021, meaning that they had until October 13, 2021 to file their dispute.

The Tenants say shock prevented them from filing their application within the time mandated by s. 49(8)(a) of the *Act*. They also indicate that they filed their application to dispute the Two-Month Notice so they could obtain more time to find alternate accommodations. I am unpersuaded that the Tenants explanation for why they need more time rise to the level exceptional circumstances. I accept that they were shocked by the Two-Month Notice, as I would imagine any tenant would be when they are handed an eviction notice. This is not exceptional and their shock, which I find to be an ordinary reaction, does not justify their failure to comply with the 15-day time limit. Further, the Tenants' admission that they filed their application to dispute the Two-Month Notice so that they could get more time to find alternate accommodation is telling. I find that the Tenants filed their application late due to the impending effective date set out in the Two-Month Notice, which is November 30, 2021. This indicates to me that there is no real merit to their claim.

I find that the Tenants have failed to demonstrate that exceptional circumstances exist to justify the extension of the 15-day time limit imposed by s. 49(8)(a) of the *Act*. Their

claim for more time is dismissed. As the Tenants failed to dispute the Two-Month Notice within 15-days and their request for more time to dispute the Two-Month Notice is dismissed, s. 49(9) is engaged. I find that the Tenants is conclusively presumed to have accepted that the end of the tenancy on November 30, 2021, which the effective date set out on the Two-Month Notice. As they continue to occupy the rental unit, I find that they are overholding. Their application to cancel the Two-Month Notice is dismissed.

I have reviewed the Two-Month Notice and I find that it complies with the formal requirements of s. 52 of the *Act*. As the Tenants' application to dismiss the Two-Month Notice is dismissed and the Two-Month Notice complies with s. 52 of the *Act*, the Landlord is entitled to an order for possession.

Though not necessary given the conclusive presumption, I would further add that I am satisfied that the Landlord has demonstrated her good faith intentions to occupy the rental unit. The Landlord is of advanced age and sold her primary residence to be closer to services and amenities, in particular healthcare related facilities. The Landlord's previous residence was in a semi-remote area and her move to a more established centre is entirely reasonable given her age and her health. Had the conclusive presumption not applied, I would have upheld the Two-Month Notice in any event.

### Conclusion

The Tenants' application for more time to dispute the Two-Month Notice is dismissed. The Tenants failed to dispute the Two-Month Notice within 15-days of its receipt and are conclusively presumed to have accepted the end of the tenancy as per s. 49(9) of the *Act*. As the Tenants continue to live within the rental unit beyond the effective date of November 30, 2021, they are overholding. The Landlord is entitled to an order for possession under s. 55 of the *Act*. The Tenants shall give vacant possession of the rental unit to the Landlord within **two (2) days** of receiving this order.

It is the Landlord's obligation to serve this order on the Tenants. If the Tenant does not comply with the order for possession, it may be filed by the Landlord 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: December 21, 2021

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Residential Tenancy Branch