



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant: CNL, OLC, RP, FFT  
Landlords: OPL, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The Tenant applied for:

- an order to cancel a Two Month Notice for Landlord's Use, dated October 27, 2021 (the Two Month Notice);
- an order for the Landlord to comply with the Act, regulation, and/or tenancy agreement;
- an order for repairs made to the unit, having contacted the Landlord in writing; and
- the filing fee.

The Landlords applied for:

- an order of possession for the rental unit; and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they served their Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Landlords by registered mail on November 6, 2021, and also in person. The Landlord confirmed they received the documents. The Tenant testified they served their November 5, 2021 amendment on the Landlord on an unknown date. The

Landlord confirmed receipt of the Tenant's NDRP, evidence, and amendment. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified they served their responsive evidence on the Tenant by registered mail on December 3, 2021. The Tenant confirmed receipt of same. I find the Landlords served their responsive evidence on the Tenant in accordance with section 89 of the Act.

The Landlords testified they did not serve on the Tenant their NDRP or the associated evidence uploaded to the Residential Tenancy Branch (RTB). I informed the parties that I would therefore not consider in my decision the evidence the Landlord submitted with their application. I find the Landlords did not serve the Tenant their NDRP and associated evidence in accordance with section 89 of the Act.

### Preliminary Matters

The RTB's Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismissed the Tenant's application for an order for the Landlords to comply with the Act, the regulation, or the tenancy agreement; and an order for repairs.

### Issues to be Decided

Is the Tenant entitled to an order to cancel the Two Month Notice?

If not, are the Landlords entitled to an order of possession?

Is the Tenant entitled to the filing fee?

Are the Landlords entitled to the filing fee?

### Background and Evidence

The parties agreed on the following particulars of the tenancy. It began August 15, 2017; rent is \$1,640.00, due on the first of the month; and the Tenant paid a security deposit of \$800.00, which the Landlords still hold.

A copy of the Two Month Notice was submitted as evidence. The Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The Two Month Notice indicates the tenancy is ending because the Landlord or the Landlord's spouse will occupy the unit.

The Landlord testified they served the Two Month Notice on the Tenant in person on October 27, 2021. The Tenant testified they received the Two Month Notice as described.

The Landlord testified that they and their spouse purchased the rental unit in the summer of 2017, with the intention to eventually move in. The Landlord testified they are now ready to move in, in order to retire in [the community], and live in their own house.

The Landlord referred me to a written statement of intention, submitted as evidence, which further details the couple's plans to relocate and move into the home, and events which prevented them from doing so sooner, such as a career change, and caring for an elderly parent.

The Landlord testified they and their spouse have been living in a home they own in another community, and that they had planned to rent that home out once they moved into the rental unit in question. The Landlord testified that due to some fortunate timing, it will be their spouse's relatives who will be moving into the home the Landlords currently occupy. The Landlords submitted as evidence a tenancy agreement between they and the relatives, beginning January 1, 2022, for the relatives to rent the home the Landlords currently occupy.

The Tenant testified that they had heard from a neighbour that it would be relatives of the Landlords, not the Landlords themselves, who would be moving into the rental unit, but the Tenant did not substantiate this claim. At times the Tenant's testimony was somewhat scattered and difficult to follow. The Tenant testified that there was no place to rent in the area, that moving was stressful, and that the Landlords know they can get a lot more money for the rental unit because rentals are scarce in the area. The Tenant testified that they believe the tenants living below them are related to the Landlords. The Tenant also testified that they were disturbed by the timing of the move, and felt it was cruel they should be required to vacate the rental unit by December 31.

### Analysis

I find the Landlord served the Two Month Notice on the Tenant in person on October 27, 2021, and in accordance with section 88 of the Act. I find the Two Month Notice meets the form and content requirements of section 52 of the Act.

As described in Residential Tenancy Branch Rule of Procedure 6.6, where a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the notice is based.

I accept the Landlord's affirmed testimony and documentary evidence that they and their spouse will be moving into the rental unit.

Taking into careful consideration all the oral and documentary evidence presented, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving the reason for the Two Month Notice, that being that they and their spouse will be moving into the rental unit, as allowed by section 49 of the Act.

The Two Month Notice is upheld. The Landlords are entitled to an order of possession, in accordance with section 55 of the Act. I find the tenancy will end on December 31, 2021, the effective date of the Two Month Notice.

The Tenant is entitled to compensation under section 51 of the Act:

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords are successful in their application, I order the Tenant to pay the \$100.00 filing fee the Landlords paid to apply for dispute resolution. Therefore, in accordance with sections 38 and 72 of the Act, I allow the Landlords to retain \$100.00 of the Tenant's security deposit in satisfaction of this monetary award.

Conclusion

The Tenant's application is dismissed.

The Landlords' application is granted.

The Landlords are granted an order of possession which will be effective at 1:00 p.m. on December 31, 2021. The order of possession must be served on the Tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

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 23, 2021

---

Residential Tenancy Branch