



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice);
- An order for the Landlord to comply with the *Act*, regulation, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on January 11, 2022, and was attended by the Tenants, who provided affirmed testimony. Although the line remained open for 14 minutes, neither the Landlord nor an agent acting on their behalf attended. The Tenants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenants were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Tenants were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Tenants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied

upon at the hearing by the applicant(s). As the Landlord did not attend the hearing, I confirmed service of these documents as explained below.

The Tenants testified in the hearing that the Notice of Dispute Resolution Proceeding Package, which includes the Application and the Notice of Hearing, along with the documentary evidence before me from the Tenants, were sent to the Landlord by registered mail on September 15, 2021. The Tenants provided a copy of the registered mail receipt and a photograph of the addressed envelope with the registered mail tracking number affixed. I note that the address shown on the envelope matches the Landlord's address for service shown in the tenancy agreement(s) before me. Canada Post tracking shows that the registered mail was sent on September 15, 2021, that a notice card was left on September 17, 2021, and that the registered mail was delivered with a signature captured, on October 4, 2021. As a result, I find that the Landlord was served on October 4, 2021, pursuant to sections 88(c) and 89(1)(c) of the *Act*.

Residential Tenancy Branch records indicate that the Notice of Dispute Resolution Proceeding Package was sent to the Tenants by email, as per their request, on September 14, 2021. As the Notice of Dispute Resolution Proceeding Package was mailed to the Landlord the following day on September 15, 2021, I therefore find that the Tenants complied with sections 59(3) and 60 of the *Act* and rule 3.1 of the Rules of Procedure.

I confirmed that the hearing details shown in the Notice of Hearing were correct and I note that the Tenants had no difficulty attending the hearing on time using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Landlord or an agent acting on their behalf.

Although I have reviewed all evidence and testimony before me that that was served in accordance with the *Act* and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenants, a copy of the decision will be sent to them by email.

### Preliminary Matters

In their Application the Tenants sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a Two Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. I therefore exercise my discretion to dismiss the Tenants claim for an order that the Landlord comply with the *Act*, regulation, or tenancy agreement, with leave to reapply:

As a result, the hearing proceeded based only on the Tenants' Application seeking cancellation of a Two Month Notice and recovery of the filing fee.

### Issue(s) to be Decided

Are the Tenants entitled to cancellation of the Two Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Are the Tenants entitled to recovery of the \$100.00 filing fee?

### Background and Evidence

The Tenants stated that the Two Month Notice was received by them via registered mail on August 31, 2021, the same day they filed their Application seeking its cancellation.

The Two Month Notice in the documentary evidence before me is signed and dated August 22, 2021, has an effective date of October 31, 2021, and states that the Two Month Notice has been served because the Landlord or their spouse intends to occupy the rental unit. Additional details are listed in the details of cause section.

The Tenants disputed the validity of the grounds given in the Two Month Notice and questioned whether the Two Month Notice was served in good faith. Although the hearing remained open for 14 minutes, neither the Landlord nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration

and no documentary evidence was submitted on behalf of the Landlord for my review or consideration.

### Analysis

Based on the uncontested and affirmed testimony before me, I am satisfied that a tenancy to which the *Act* applies exists between the parties, and that the Tenants disputed the Two Month Notice within the statutory time period set out under section 49(8) of the *Act*.

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove the validity of a notice to end tenancy disputed by a tenant falls to the landlord.

As the Landlord did not attend the hearing to provide any evidence in support of the Two Month Notice, and the Tenants disputed that the Landlord had grounds to end the tenancy, I find the Landlord has failed to establish on a balance of probabilities that they have cause to end the tenancy under section 49 of the *Act*. As a result, I grant the Tenants' Application seeking its cancellation and I order that the tenancy continue in full force and effect until it is ended by one or both of the parties in accordance with the *Act*.

As the Tenants were successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2)(a), I therefore authorize the tenants to deduct \$100.00 from the next months rent payable under the tenancy agreement, as per their request at the hearing, or to otherwise recover this amount from the Landlord.

### Conclusion

I order that the Two Month Notice to End Tenancy dated August 22, 2021, is cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

Pursuant to section 72(2)(a), I authorize the Tenants to deduct \$100.00 from the next months rent payable under the tenancy agreement, or to otherwise recover this amount from the Landlord.

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: January 11, 2022

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Residential Tenancy Branch