



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

The Tenants filed an Application for Dispute Resolution (the “Application”) on December 12, 2021 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 10, 2022.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that the Tenants provided in advance. On the basis of the Landlord’s confirmation that they received this, I proceeded with the hearing.

### Issues to be Decided

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

Should the Tenants be unsuccessful in seeking to cancel the Two Month Notice, is the landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Are the Tenants entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenants submitted a copy of the tenancy agreement. This shows the start of the tenancy on February 1, 2021 with the rent amount at \$2,600. The parties agreed on the actual signing of the agreement; however, while the Tenants recall discussion specifically focused on the length of the agreement and that it would continue for quite some time beyond the fixed one-year term, the Landlords maintained in the hearing that they had mentioned the possibility of the sale of the home.

The Landlords issued the Two-Month Notice to the Tenants on December 3, 2021. The Tenants confirmed they received the document in person. This provided the move-out end-of-tenancy date as February 5, 2022. The second page of the document shows the Landlord's indication that "the child of the landlord" will occupy the rental unit.

In the hearing, the Landlords set out their reason for issuing the Two-Month Notice. Plans were divided on whether to sell the rental unit or continue to rent to the Tenants. The Landlord's child told them they wanted to go to university in British Columbia, so the Landlords' son planned to come to live in the rental unit. This disagreement between the Landlords was on the 1<sup>st</sup> day of December 2020, as they stated in the hearing.

The Landlords pointed to a text message they sent to the Tenant on December 2, after a family meeting. This message appears in the Tenants' evidence. The message sets out that the Landlords' child wants to live there, and "insists to live separately from us." Regarding their planned study, the Landlords' child in the hearing stated they had not yet applied to the local university in British Columbia.

The Tenants, in response to the Landlord's submissions, stated their disagreement with the reason provided by the Landlord on the Two-Month Notice. They reiterated that it was their intention to remain as Tenants for a period longer than one year from the outset. They pointed to the text message evidence to state the Landlords have changed their minds on either a sale or a continued tenancy so many times. After the Tenants mentioned only a 1.5% cap on a rent amount increase, the Landlords changed their plan to sell the rental unit, then changed the reason to that of their child's need.

The Tenants also provided that, more recently since their Application, the Landlord has hired a realtor. This realtor contacted the Tenants directly and there was an open house at the rental unit on January 2, 2022. This means the Landlord reverted from planning to have their child use the rental unit, back to the plan to sell the rental unit.

The Landlords confirmed the house is listed and hoped the Tenants could cooperate with their agent for selling the home. The Tenant reiterated this was confirmation of a sale process, meaning the Landlords' child no longer wants to continue to use the rental unit.

### Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice "if a landlord or close family member of the landlord intends in good faith to occupy the rental unit." Following this, s. 55 provides that I must grant to the Landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the Tenant's Application or uphold the Landlord's notice.

In this matter, the Landlords bear the onus to prove the reason for ending the tenancy is valid and undertaken in good faith.

I find the Landlords have not met the burden to show they issued the Two-Month Notice in good faith. I am not satisfied that the Landlords need for the rental unit is legitimate.

The text message evidence shows the Landlords not having firm plans with regard to the unit on December 1<sup>st</sup>. On this date, dialogue with the Tenants continued on the topic of the financial drawbacks of continuing with a tenancy. I find the definitive message to the Tenant on that date is that they wish to sell the rental unit. The Tenants advised the Landlord on that same day that the Landlords may still end a tenancy even with a sale happening.

Shortly after this, the Landlords issued the Two-Month Notice, after announcing to the Tenants that their child wanted the rental unit for themselves.

I find the Landlords' plan for a sale were more solid than the plans their own child had for their own use of the rental unit. The Landlords did not present firm plans for study, with a set timeline for those study plans; indeed, the Landlords' child in the hearing stated they had not yet enrolled at the local university. Given the relatively narrow timeframe in which to end a tenancy, I find future university study is just not plausible on this basis.

The Tenants then presented that there was more recently an open house on January 2<sup>nd</sup>. I find it is plain that the Landlords are intending to sell, with the home sale process firmly set in motion.

From these two points above I conclude the Landlords are focused on a sale. If the Landlords had some idea about their child using the rental unit on their own, more recent events have cancelled that, thus invalidating the Two-Month Notice. I find it more likely than not that the idea of a sale was paramount for the Landlords at the time they issued the Two-Month Notice to the Tenants on December 3, 2021. This is strong evidence of an ulterior motive.

The Two-Month Notice is thus cancelled, and the tenancy will continue.

As the tenants were successful in this Application, I find they are entitled to recover the \$100.00 filing fee. I authorize the tenants to withhold the amount of \$100.00 from one future rent payment.

### Conclusion

For the reasons above, I order that the Two-Month Notice issued by the Landlords on December 3, 2021 is cancelled. The tenancy remains in full force and effect.

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

Dated: January 10, 2022

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Residential Tenancy Branch