



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The Tenants applied on September 19, 2021 for:

- an order to cancel a Two Month Notice for Landlord's Use, dated September 9, 2021 (the Two Month Notice); and
- the filing fee.

Attending the hearing were the Landlord's lawyer (SC), Tenant BS (the Tenant), and the Tenants' lawyer (DP). The Tenant was affirmed. Those present 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 the Notice of Dispute Resolution Proceeding (NDRP) and their evidence on the Landlord by email on September 28, 2021, and by registered mail on October 27, 2021 to the Landlord's address on the tenancy agreement. SC confirmed the Landlord received the documents. In accordance with section 90 of the Act, I deem the Tenants' NDRP and evidence received by the Landlord on October 1, 2021. I find the Tenants served the Landlord in accordance with section 89 of the Act.

SC testified she served the Landlord's responsive evidence on the Tenants by email on January 25, 2022, and by courier on the same day. The Landlord's evidence was served on the Tenants one day late. The Tenant and DP confirmed they had received the Landlord's evidence, and were prepared to proceed. I find the Landlord served their responsive evidence on the Tenant in accordance with section 88 of the Act.

### Issues to be Decided

- 1) Are the Tenants entitled to an order cancelling the Two Month Notice?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Are the Tenants entitled to the filing fee?

### Background and Evidence

Those present agreed on the following particulars of the tenancy. It began January 15, 2019; rent is \$3,000.00, due on the first of the month; and the Tenants paid a security deposit of \$1,500.00, which the Tenant indicated the Landlord has not returned. The Tenant testified they still occupy the rental unit.

SC submitted the Landlord served the Two Month Notice by putting it in the mailbox and by emailing it to the Tenants, both in September 2021. The Tenant testified they received the Two Month notice via email on September 10, 2021.

The Two Month Notice indicates the tenancy is ending because the Landlord or the Landlord's spouse will occupy the unit. A text box added to the Two Month Notice states: "The owner will occupy upstairs and set up a daycare center in the basement." As the Landlord's address was not filled in on the Two Month Notice, I asked SC how the Tenants were to have communicated with the Landlord regarding the Notice. SC submitted that the Tenants had the Landlord's telephone number and email address, which the Tenant confirmed.

SC submitted that the Landlord is a single mother, currently living at a friend's house in British Columbia, as she sold her sole property on August 16, 2021. The Landlord submitted as evidence a signed freehold transfer document dated August 16, 2021. The Landlord also submitted as evidence BC Assessment and title search documentation demonstrating she does not own the home she is currently staying in.

SC submitted that the Landlord wishes to move into her property so that she can run a daycare out of her home, to generate income. SC submitted that the *Community Care and Assisted Living Act* (CCALA) requires a Family Child Care licensee must provide the care within their personal residence. SC submitted this is why the Landlord must move into her property. Otherwise, the Landlord would have to rent a home and find a job. A copy of the relevant part of the CCALA is submitted as evidence.

SC submitted that the Landlord is currently in China, but will be back in town in March, and has booked a mover for March to move possessions from the friend's home to the Landlord's property. Submitted as evidence is an undated text string in which the Landlord is in dialogue with another party, requesting moving services for March 20, then changing the date to March 31. The Landlord submitted as evidence a business card from a moving company, to demonstrate that the submitted text string, showing the telephone number of the other party, is the Landlord's correspondence with a mover.

The Landlord has also submitted as evidence an email from the Landlord to SC in which the Landlord states that as she is in China, she was not able to access the BC Hydro website.

The Tenants' lawyer, DP, submitted that the Landlord has provided evidence that she is living in [city name], but that she is in China. DP submitted that the Landlord's October 6, 2021 email to SC states she "maybe will back [sic] to [city name] on [sic] the end of March 2022," noting that the Landlord's return date is indefinite. DP also referred to SC's November 4, 2021 email to him, which states that her client had to go out of town until March 2022.

DP submitted that the Landlord is in China, has been there "for a long time," and that it is easy to send documents to a home to make it look like someone is living there, and that it is a common practice.

SC submitted that she met with the Landlord while the Landlord was here in Canada, but did not state when.

DP submitted that the Landlord has not submitted as evidence a moving contract or a plane ticket to substantiate her claims.

SC submitted that the Landlord had to go out of town, that the Landlord's parents are in China, and that the Landlord is likely returning to town on March 23, 2022.

DP submitted that the Tenants' primary concern regarding the Two Month Notice is that it is not the Landlord, but her cousin who will move in and run a daycare out of the property.

The Tenant testified that the Landlord visited the unit on August 24, 2021. The Tenant testified that during the visit, the Landlord stated she was considering moving into the

home with her child and her cousin, and that she was thinking about creating a daycare downstairs.

The Tenant submitted he was not sure how that would work because it is not a large house. The Tenant testified there are two bedrooms upstairs, and a third bedroom downstairs, with a washroom.

SC submitted that it is possible for people to share a small space.

The Tenant testified that they met with the Landlord for about thirty minutes, after which the Landlord's cousin arrived. The Landlord testified they did not know what the Landlord and her cousin were discussing, as they spoke to each other in [another language]. The Tenant testified that it was the Landlord's cousin who was measuring closets and other dimensions, which gave the Tenant's wife, present at the time, the impression that it was the Landlord's cousin who was moving into the house, not the Landlord.

SC submitted that the Landlord's cousin has a daycare herself, and is going to coach the Landlord on setting up her daycare business.

The Tenant testified that the cousin who visited the home was a man, not a woman.

The Tenant testified that on October 7, 2021, the Landlord's architect visited the home to make drawings and plans, "maybe for a daycare," but that the architect also spent time upstairs.

SC submitted that the architect was there to make plans to renovate the basement into a daycare, and that the Landlord may wish to make additional renovations upstairs.

### Analysis

Based on the testimony of the parties, I find the Landlord served the Two Month Notice on the Tenants by putting it in the mailbox and by emailing it to the Tenants, both in September 2021. The Tenant testified they received the Two Month notice via email on September 10, 2021. I find the Landlord served the Tenants the Two Month Notice in accordance with section 88 of the Act.

As the Two Month Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52.

Though the Landlord did not provide their address on the Two Month Notice, based on the testimony of the parties that the Tenants had the Landlord's telephone number and email address, I am satisfied the Tenants would have been able to contact the Landlord regarding the Two Month Notice.

The standard of proof in a dispute resolution is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A explains that good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the Act or the tenancy agreement.

I accept DP's submission that, with her evidence, the Landlord has sought to present herself as living in British Columbia, but that emails submitted as evidence, dated October 6, 2021 and November 4, 2021, respectively, both indicate that the Landlord is away and plans to return March 2022.

I also accept the Tenant's testimony that due to the behaviour of the Landlord and her cousin during their visit to the property, the Tenant's wife formed the impression that it would be the cousin moving into the home, not the Landlord.

I find the Landlord has provided very limited evidence, has not attended the hearing, and has not called any witnesses to support her claim that she is moving into the rental unit.

The inconsistencies raised by the Tenant, the evidence referred to above, and the lack of substantial evidence from the Landlord calls into question the Landlord's claims that she will move into the rental unit, and that the Landlord is acting in good faith.

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 not met the onus of proving the reason for the Two Month Notice, nor that she is acting in good faith.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants are successful in their application, I order the Landlord to pay the \$100.00 filing fee the Tenants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the Tenants are authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

### Conclusion

The Tenants' application is granted.

The Two Month Notice for Landlord's Use is cancelled; the tenancy will continue until it is ended in accordance with the Act.

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: February 07, 2022

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Residential Tenancy Branch