



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, 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 for:

- an order to cancel a Two Month Notice for Landlord's Use, dated September 21, 2021 (the Two Month Notice);
- an order for the Landlord to comply with the Act, regulation, and/or tenancy agreement; 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 Tenants testified they served the Notice of Dispute Resolution Proceeding (NDRP) and their evidence on the Landlords by email on October 15, 2021. The Landlords confirmed they received the documents. I find the Tenants served the Landlords in accordance with section 89 of the Act.

The Landlords testified they served their responsive evidence on the Tenants by email on February 5, 2021, and in person on February 10, 2021. The Tenants confirmed they received the Landlords' evidence. I find the Landlords served their responsive evidence on the Tenants in accordance with section 88 of the Act.

### Preliminary Matter

The Residential Tenancy Branch 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 it is not related to the central issue of whether the tenancy will continue, I dismissed the Tenants' claim for an order for the Landlords to comply with the Act, regulation, and/or tenancy agreement.

### Issues to be Decided

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

### Background and Evidence

The parties agreed on the following particulars of the tenancy. It began October 1, 2019; rent is \$3,900.00, due on the first of the month; and the Tenants paid a security deposit of \$1,950.00, which the Landlords still hold.

The Landlord testified they had a disagreement with the Tenants about how many international students the Tenants were allowed to host in the rental unit, and the Landlords were surprised to learn that the Tenants were housing two international students.

The Tenants provided testimony around the disagreement about the number of international students in the home.

The Tenants testified that in August 2021, the Landlords indicated they would be increasing the rent by \$300.00 a month, effective the following month, and that the Tenants had been overusing the water, causing the bill to increase.

The Landlord testified that with the Tenants housing two international students, the Landlords' costs had increased, in the form of insurance due to short term rentals, and

deterioration of the house. The Landlord testified that they communicated to the Tenants that if they did not want the increase, they could choose not to house a second international student.

The Tenants testified they were willing to pay the rent increase, and the Landlord's proposed water bill increase of \$90.00 a month, as long as they were implemented in January 2022, after the rent freeze was lifted. The Tenants testified the Landlords said it was not a rent increase, but a "change of agreement."

The Tenants testified that during a telephone conversation, the Landlord "harassed" one of the Tenants to accept the proposed increases without discussing it with the Tenant's other family members.

The Landlord testified they did not harass the Tenant, but that after a conversation in which one of the Tenants had mentioned having 10 people in the home, including 4 international students, as the Landlords did not want their home "treated as a hotel," and had lost their trust in the Tenants, the Landlords decided that day they would move into the property.

The Landlord testified they served the Two Month Notice on the Tenants by email on September 24, 2021, and the Tenants testified they received the Two Month Notice on the same day.

A copy of the Two Month Notice is submitted as evidence, and indicates the tenancy is ending because the Landlord or the Landlord's spouse will occupy the unit.

The Tenants testified that the Landlords had been trying to sell the home, and that after serving them with the Two Month Notice, the Landlords continued to show the house to prospective buyers, with the last showing being on October 16, 2021.

The Landlord testified they had the house for sale in May of 2021 for \$2.78 million, but that \$2.65 million was their target to break even. The Landlord testified that in mid September 2021, before they served the Two Month Notice on the Tenants, they were notified by their realtor that a house close by, similar but renovated, had sold for \$2.43 million, "much below our target."

The Landlord testified: "We did not think selling the house was relevant" to the notice to end tenancy. The Landlord testified that they forgot to tell their realtor about their

decision to move in, until the Tenants served the Landlords with the NDRP on October 15, 2021. The Landlord testified that they then asked their realtor to stop the showings.

The Tenants testified that there was a “For Sale” sign in front of the property until October 27, 2021.

The Tenants testified that with the Landlords’ ongoing efforts to sell the house, the Tenants question the Landlords’ claim they will occupy the property, and question that the Landlords are acting in good faith.

The Landlords testified they are currently renting another property and ensured that their tenancy agreement continued as a month-to-month tenancy to give them the flexibility to move into the rental unit when it becomes available. The Landlords submitted as evidence a copy of their current tenancy agreement, which as of February 28, 2022, becomes month-to-month.

The Landlord submitted that “It could take a year to sell the house,” and that they have nowhere else to live.

### Analysis

Based on the testimony of the parties, I find the Landlords served the Two Month Notice on the Tenants by email on September 24, 2021, and it was received by the Tenants on the same day. I find the Landlords served the Tenants 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.

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.

Section 49(3) of the Act states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Two Month Notice indicates the tenancy is ending as the rental unit will be occupied by the Landlord or the Landlord's spouse.

However, the Tenants have provided affirmed testimony indicating that the Landlords intend to sell the rental unit, not live in it. They have testified that after serving them with the Two Month Notice, the Landlords continued to show the house to prospective buyers, with the last showing being on October 16, 2021. The Tenants also testified that there was a "For Sale" sign in front of the property until October 27, 2021.

The Landlords testified that they initially tried to sell the home in May of 2021, and that in "mid September" 2021, before they served the Two Month Notice on the Tenants on September 24, 2021, they were in discussions with their realtor. The Tenants testified that they forgot to tell the realtor about their decision to move in, which I find improbable.

The Landlords also provided specific testimony on their target price to break even on the sale of their home, testimony on a comparable property in their area, and testified that "It could take a year to sell the house."

Based on the affirmed testimony of the parties, I find on a balance of probabilities that the Landlords intend to sell, not occupy, the rental unit.

I further find that the Landlords have not met the onus of proving the reason for the Two Month Notice, nor that they are acting in good faith.

Therefore, the Two Month Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

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 Landlords 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 22, 2022

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Residential Tenancy Branch