



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL, RR, RP, OLC, FFT**

### Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenants applied for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 31, 2022 ("1 Month Notice") pursuant to section 47;
- an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided the Landlords pursuant to section 65;
- an Order requiring the Landlords to complete repairs to the rental unit pursuant to section 32;
- an Order that the Landlords comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or the tenancy agreement pursuant to section 62; and
- authorization to recover the Tenants' filing fee for the Application from the Landlord pursuant to section 72.

The two Landlords ("TF" and "SG") and the two Tenants ("JK" and "RD") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

JK stated the Tenants served each of the Landlords with the Notice of Dispute Resolution Proceeding and their evidence ("NDRP Package") by registered mail on February 3, 2022. JK submitted the Canada Post invoice and tracking numbers for service of the two NDRP Packages on each of the Landlords. TF acknowledged the Landlords received the NDRP Packages. I find each of the Landlords were served with the NDRP Packages in accordance with the provisions of sections 88 and 89 of the Act.

TF stated the Landlords served their evidence in a conspicuous place in front of the Tenants' door on April 7, 2021. JK acknowledged the Tenants received the Landlords' evidence. I find the Landlords' evidence was served on the Tenants in accordance with the provisions of section 88 of the Act.

### Preliminary Matter – Severance and Dismissal of Tenant's Claims

The Application included claims for: (i) an order to allow the Tenants to reduce rent for repairs, services or facilities; (ii) an order requiring the Landlords to complete repairs to the rental unit; and (iii) an order that the Landlords comply with the Act, Regulations and/or the tenancy agreement pursuant.

. Rule 2.3 of the RoP 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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch ("RTB") are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issues in the Application were whether (i) the 2 Month Notice tenancy would continue or end based on the 2 Month Notice and; (ii) the Tenant's would be entitled to recover their filing fee for the Application. The Tenants' claims for (i) an order to allow the Tenants to reduce rent for repairs, services or facilities; (ii) an order requiring the Landlords to complete repairs to the rental unit; and (iii) an order that the Landlords comply with the Act, Regulations and/or the tenancy agreement pursuant are not sufficiently related to the primary issue of whether the 2 Month Notice is upheld or set aside. In the event I find the Landlords are entitled to an Order of Possession, then I will dismiss, without leave to reapply, those other claims. In the event I cancel the 2 Month Notice, then I will dismiss those claims with leave to reapply.

### Issues to be Decided

Are the Tenants entitled to:

- cancellation of the 2 Month Notice?
- recovery of the filing fee for the Application from the Landlords?
- if the 2 Month Notice is not cancelled, are the Landlords entitled to an Order of Possession pursuant to section 55(1) of the Act?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

TF stated the tenancy agreement was entered into between the former landlord ("Former Owner") of the rental unit and the Tenants. TF stated the tenancy commenced on June 15, 2016 with rent of \$750.00 payable on the 15<sup>th</sup> day of each month. TF stated that the Tenants paid a security deposit of \$375.00 and confirmed the Landlords were holding the deposit in trust on behalf of the Tenants. JK confirmed the details of the tenancy provided by TF were correct.

TF stated the Landlords served the 2 Month Notice on the Tenants' door on January 3, 2022. JK confirmed the Tenants received the 2 Month Notice. I find the 2 Month Notice was served on the Tenants in accordance with the provisions of section 88 of the Act.

TF stated the Landlords purchased the house ("House") in which the rental unit is located from the Former Owner in March 2021. TF stated the Landlords moved into the House in June 2021. TF stated it was the intention of the Landlords to obtain use of the entire House. TF stated that after satisfaction of the subjects in the purchase and sale agreement, the Landlords served the Former Owner with a Buyers Notice to Seller for Vacant Possession. TF stated a Two Month Notice to End Tenancy dated March 26, 2021 ("Original Notice") was served on the Tenants. However, it was his understanding the Tenants disputed the Original Notices, there was an arbitration at the RTB and the Original Notice was cancelled. TF stated the closing of the purchase and sale of the House completed and the Landlords moved into the House with the Tenants occupying the rental unit.

TF stated that, due to SG expecting a child, and the Landlords' two year old child breaking a leg, the Landlords deferred giving the Tenants a notice to end tenancy until the spring of 2022. TF stated the Landlords always wanted the rental unit for their personal use as a gym, home office personal, accommodation for their family and guest accommodations for relatives. TF stated that his parents and SG's parents live overseas and visit for extended periods of time. TF stated the Landlords have not had any discussions with the Tenants regarding increasing the rent for the rental unit. TF stated the Landlords were acting in good faith when they served the 2 Month Notice on the Tenants.

JK stated the Tenants disputed the Original Notice served on them on the basis that the signature of the Former Owner was forged. JK stated that, after a hearing, an arbitrator of the RTB cancelled the Original Notice. JK stated the main issue the Tenants had with the Landlords was they have refused to accept responsibility for the tenancy required by the Act and Regulations. JK stated that Tenants have served the Landlords with two notices requesting repairs be performed on the rental unit. JK stated a third slip and fall has occurred under the gutters to the House due to lack of maintenance. JK stated the Tenants relationship with the Landlords was "exhausted" and "toxic". JK stated the Tenants never agreed to move out in the spring of 2022. JK stated the Tenants have retained a lawyer in connection with claims they are making against the Former Owner and the Landlords.

TF stated the Landlords have attended to various repairs and provided the Tenants with various items they requested. TF stated the Landlords have replaced the refrigerator and installed a rubber insulator on the entry door for the rental unit.

JK stated that, after being "accosted" by SG, she requested a meeting with the Landlords in a good faith attempt to resolve issues but that has not occurred. JK stated that the Landlords have chosen what to repair in the rental unit and they have not prioritized the repairs, such as those representing health and safety risks, that the Tenants have advised the Landlords should be undertaken.

### Analysis

TF stated the Landlords served the 2 Month Notice on the Tenants' door on January 3, 2022. Pursuant to section 49(8)(a) of the Act, the Tenants had 15 days to dispute the 2 Month Notice, or January 18, 2022. The records of the Residential Tenancy Branch disclose the Tenants filed their application for dispute resolution to dispute the 2 Month Notice on January 18, 2021. I find the Tenants made their

application to dispute the 2 Month Notice within the 15-day dispute period required by section 49(8)(a) of the Act.

*Residential Tenancy Policy Guideline# 2A* ("PG 2A") addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. PG 2A provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

In *Gichuru v Palmar Properties Ltd.*, 2011 BCSC 827 the BC Supreme Court found that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith: *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165.

*"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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement."*

JK testified the 2 Month Notice should be cancelled because the Landlords have failed to perform repairs to the rental unit requested by the Tenants. JK stated the Tenants did not agree to vacate the rental unit in the Spring of 2022 and there is nowhere to find accommodations in their area. In addition, JK stated the Tenants have retained legal counsel in respect of monetary claims they have against the Former Owner and the Landlords. JK stated that, as the Landlords have not accepted responsibility as landlords, they were not acting in good faith when the Landlords served the 2 Month Notice on them.

TF stated that the Landlords served a Buyers Notice to Seller for Vacant Possession at the time of the purchase and sale to have the Former Owner serve the Tenants with a Two Month Notice to End Tenancy. JK stated the Tenants were served with the Original Notice and it was cancelled by an arbitrator of the RTB which prevented the Landlords from taking occupation of the entire House. TF stated the Landlords want the use of the rental unit to use as a gym, office, personal accommodation for family and guest accommodations for relatives. TF stated the Landlords have replaced the refrigerator and provided the Tenants with a number of items

requested by the Tenants. TF stated the Landlords were acting in good faith at the time they served the 2 Month Notice.

Failure of a landlord to comply with the requirements of the Act is not determinative of whether a landlord is acting in good faith when serving a Two Month Notice on a tenant. In this case, the Landlords replaced the refrigerator and provided other materials to the Tenants. Although the repairs performed by the Landlords may have fallen below the expectations of the Tenants, I am not persuaded by JK's testimony and evidence that this must lead to the conclusion that the Landlords were not acting in good faith at the time they served the Tenants with the 2 Month Notice. I also note that the Landlords did not require the permission of the Tenants to end the tenancy pursuant to the 2 Month Notice as long as the effective date of the 2 Month Notice was on or after the last day of any fixed term remaining in the tenancy. In this case, there was no fixed term to the tenancy. Furthermore, there are no hardship provisions in the Act that would disentitle a landlord from ending a tenancy when the tenant asserts they are unable to find rental accommodation the tenant can afford, or in the same geographic area, as the rental unit.

Furthermore, I find JK did not provide any testimony or evidence to support a finding that the Landlords, who are currently occupying the remainder of the House, do not intend in good faith to occupy the rental unit. TF stated the Landlords served the original owner with a Buyers Notice to Seller for Vacant Possession. TF stated the Original Notice was cancelled by an arbitrator of the RTB and, as a result, the tenancy continued. There is no evidence that the Landlords participated in preparing or serving the Original Notice on the Tenants. TF stated that, due to difficult circumstances that arose after the Landlords moved into the House, they decided to defer serving the Tenants with the 2 Month Notice.

Based on the foregoing, I find the Landlord has provided sufficient testimony and evidence to establish grounds to end the tenancy pursuant to section 49(3) of the Act on the basis the Landlords intend in good faith to use the rental unit pursuant to section 49(3) of the Act. I dismiss the Application.

I must now consider whether the Landlord is entitled to an Order of Possession. Section 55 of the Act states:

- 55 (1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an Order of Possession. Section 52 of the Act states:

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed the 2 Month Notice and find it complies with the form and content requirements of section 52.

The Tenants rent is paid for the month of April 2022 and they have not had their last month in the rental unit rent free. Based on the above, I grant the Landlords an Order of Possession effective at 1:00 pm on May 31, 2022. The Landlords are provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

As Tenants were not successful in the Application, I dismiss their claim for reimbursement of the \$100.00 filing fee they paid for the Application.

As the tenancy is ending, the other claims made in the Application are moot. As such, I dismiss, without leave to reapply, the Tenants' claims for (i) an order to allow the Tenants to reduce rent for repairs, services or facilities; (ii) an order requiring the Landlords to complete

repairs to the rental unit; and (iii) an order that the Landlords comply with the Act, Regulations and/or the tenancy agreement. If the Tenants believe they are entitled to monetary compensation for a breach or breaches of the Act, Regulations and/or tenancy agreement, they have the option of making a new application for dispute resolution to make those monetary claims.

### Conclusion

The Application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlords effective at 1:00 pm on May 31, 2022. The Landlords are provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: April 21, 2022

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Residential Tenancy Branch