



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, RP, LRE, OLC, LAT, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 27, 2022 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlords to make repairs to the rental unit, pursuant to section 33;
- an order to suspend or set conditions on the landlords' right to enter the rental unit, pursuant to section 70;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- authorization to change the locks to the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant MS" did not attend this hearing, which lasted approximately 52 minutes. The two landlords, landlord SM ("landlord") and "landlord CM" (collectively "landlords"), the landlords' advocate, tenant ES ("tenant"), and the tenants' advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. and ended at 10:22 a.m. The tenants' witness was excluded from the outset of this hearing at 9:32 a.m. The tenant confirmed that she had the contact information to contact her witness later during this hearing, to recall him to testify. The tenants' witness was not recalled by the tenant or the tenants' advocate later during this hearing. The tenants' witness did not testify at this hearing.

The tenant claimed that her witness would be testifying about repairs to the rental unit. Both parties were informed at the outset of this hearing, that the issue of repairs would not be discussed at this hearing.

The landlord confirmed the names and spelling for her and the landlords' advocate. Landlord CM, the tenant, and the tenants' advocate confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send a copy of this decision to both parties after the hearing.

The landlord stated that the landlords' advocate had permission to speak on behalf of both landlords named in this application. The landlords' advocate stated that she is the daughter of both landlords. The tenant confirmed that she had permission to represent tenant MS, who is her daughter (collectively "tenants"). She said that the tenants' advocate had permission to represent her at this hearing.

The landlord and the tenants' advocate identified themselves as the primary speakers at this hearing. At the outset of this hearing, I informed both parties that all participants could speak at this hearing, provided that they identify themselves and speak one at a time. Both parties confirmed their understanding of same.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any party. At the outset of this hearing, the landlord, landlord CM, the landlords' advocate, the tenant, and the tenants' advocate all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement process, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them or act as their agent or advocate. They had an opportunity to ask questions, which I answered. They confirmed that they were ready to proceed with this hearing, they wanted me to make decision, and they did not want to settle this application. Both parties were offered multiple opportunities to settle this application at the beginning and end of this hearing and declined to do so. Neither party made any adjournment or accommodation requests.

At the outset of this hearing, I informed both parties that the main, urgent and priority issue that would be dealt with at this hearing was the landlords' 2 Month Notice and the order of possession. I notified them that the remainder of the tenants' application could be severed at a hearing, pursuant to Rules 2.3 and 6.2 of the RTB *Rules*, if there was insufficient time to hear these claims during this hearing. I informed them that if I ended

this tenancy, the remainder of the tenants' application would be dismissed without leave to reapply. I notified them that if I continued this tenancy, the tenants may have leave to reapply for the remainder of this application. Both parties confirmed their understanding of same.

I informed both parties that the maximum hearing time for this application was 60 minutes. I notified both parties that if the hearing did not finish within 60 minutes, it could be adjourned to a later hearing date. Both parties confirmed their understanding of same.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' advocate confirmed receipt of the landlords' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' application and both tenants were duly served with the landlords' evidence.

The tenants' advocate confirmed that the tenant received the landlords' 2 Month Notice on January 28, 2022, by way of posting to her door. The landlord confirmed service using the above method on the above date. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlords' 2 Month Notice on January 28, 2022.

#### Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee paid for this application?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The landlord and the tenants' advocate agreed to the following facts. This tenancy began on February 21, 2012. Monthly rent in the current amount of \$981.36 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenants

and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement. The tenants continue to reside in the rental unit. The rental unit is the basement suite of a house, where landlord CM resides in the upper suite of the same house.

A copy of the 2 Month Notice was provided for this hearing. Both parties agreed that the effective date on the notice is April 1, 2022. Both parties agreed that the landlords identified the following reason for seeking an end to this tenancy on page 2 of the notice:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*
- *Please indicate which family member will occupy the unit.*
  - *The landlord or the landlord's spouse.*

The landlord testified regarding the following facts. Landlord CM plans to retire in September 2022. He wants the rental unit property for his own use. He now has a life-threatening illness, which is stage 4 cancer, which requires space for him at the rental unit. Initially, the landlords felt empathy for the tenants and offered them a couple of extra months to vacate the rental unit. However, now the tenants are required to leave as soon as possible because landlord CM requires peace and rest and cannot heal in a "toxic" environment.

The landlords' advocate made the following submissions. Landlord CM is her father. It was originally landlord CM's plan to retire and be home often. He is entitled to reclaim the rental unit as part of the house. Landlord CM has weekly meetings with different doctors, they are trying to figure out his diagnostics and treatment, he is waiting for brain surgery, he does not know how long he has to live, they do not know his mobility or movement, and his mental state has declined. In many conversations with landlord CM, he has questioned whether the tenant is watching and taping him. Landlord CM is under a lot of stress, and it is "heartbreaking" to watch. He cannot heal with this stress. As per the tenants' evidence, if they claim that it has been terrible for so long, why would they want to stay at the rental unit? The tenant wrote a letter in her own evidence that was submitted for this hearing, that if the landlords were so bad she would have been gone a long time ago. Everything has been fixed by the landlords. Landlord CM did not get cancer or retire in "bad faith."

The tenants' advocate was given an opportunity to question both landlords during this hearing. She selected the landlord to answer her questions. She asked the landlord whether she has provided evidence of landlord CM's retirement. The landlord responded that no evidence was needed, as landlord CM wants the home for his entire use, as he is permitted to do so under section 49 of the Act. Landlord CM is going to be 70 years old. The tenants' advocate asked why a legal rent increase was issued three days after the 2 Month Notice, effective February 1, 2022. The landlord responded that the rent could not be increased due to COVID, so it was done as soon as the landlords were able to do so.

The tenants' advocate made the following submissions. The landlords have not submitted any evidence of landlord CM's retirement. The landlords issued a legal rent increase to the tenants three days after the 2 Month Notice was issued, effective February 1, 2022. The tenant submitted a statement with their application. The tenant disputes the landlords' 2 Month Notice. It is the tenant's opinion that there are unresolved issues from last year. The landlords have a history of acting dishonestly regarding the nature of repairs needed. Landlord CM has attended, evaluated, and assigned blame to the tenant for issues regarding the refrigerator, mice, and the washer. The landlords ignored the request of the tenant regarding the power washer. The landlords do not follow through with action, which is demonstrated in the text messages. The tenant asked for repairs due to water pooling and landlord CM told her to be careful with filling the washer. The 2 Month Notice is related to repairs in the rental unit. The landlords have an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards. In spring 2021, there were issues identified in tenant MS's bedroom, regarding picking the paint colour. In summer 2021, the landlords made inaccurate statements. A rent increase was issued to the tenants three days after the 2 Month Notice was given, so there is no intention for the landlords to take over the property. The landlords have an unconcealed business license and refuse to resolve these issues. There are issues with the landlords' housing insurance. The landlords are not taking the issue regarding the business license seriously. The landlords have not provided proper notice of entry to the tenants. The tenants have a right to quiet enjoyment. The tenants tried to erect proper boundaries with the landlords. The tenant wants an extension to move out of the rental unit on July 1, 2022, if an order of possession is issued against her by the RTB.

The landlord stated the following facts in response to the submissions of the tenants' advocate. All repairs have been done inside the rental unit. The landlords need dry weather in order for repairs to the exterior of the home to be completed. The landlords have professional contractors for the repairs.

## Analysis

### Rules

The following RTB *Rules of Procedure* state, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

*...*

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

### Credibility

I found the testimony of the landlord and the landlords' advocate to be clear, concise, and credible. They provided their testimony in a calm, candid, straightforward, and consistent manner. Their testimony did not change throughout this hearing.

Conversely, I found that the submissions of the tenants' advocate were unclear, confusing, inconsistent, and less credible. She mainly focussed on the tenants' request for repairs during her submissions. She began reading statements aloud from the evidence contained in the tenants' request for repairs section of their application. I repeatedly notified her at the outset and during this hearing, that we were not dealing with the tenants' request for repairs at this hearing, we were only dealing with the tenants' application to cancel the 2 Month Notice. I repeatedly informed her that she was reading out information and referring to documents contained in the online RTB details of dispute for the repairs section of the tenants' application. I repeatedly notified her that she could provide relevant submissions regarding the 2 Month Notice only, since this was the main and priority issue to be determined at this hearing.

During this hearing, the tenants' advocate repeatedly asked me what she should say, what documents she should review, and how she should present her submissions at this hearing. I repeatedly informed her that I could not provide legal advice to her, act as her agent or advocate, advise her on what to say, when to say it, or what documents to review and how. I repeatedly notified her that I had received the tenants' documentary evidence, but it was up to her and the tenant to point me to the documents, refer to specific provisions, review the documents, and present their evidence how they see fit. I repeatedly informed her that I could not go through the tenants' evidence and determine what evidence was relevant to assist the tenants, on my own accord. I repeatedly notified her that it was up to her and the tenant to present their evidence, submissions, and documents to me and my role as an Arbitrator was to make a decision about the tenants' application. She confirmed her understanding of same.

The tenant and the tenants' advocate were provided with ample and additional time during this hearing, to speak privately and mute their end of the telephone. At the outset of this hearing, they confirmed that they were both calling from the same telephone line and were sitting in a room together during this hearing.

### Findings

According to subsection 49(8) of the *Act*, tenants may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after they receive the notice. The tenants claimed that they received the 2 Month Notice on January 28, 2022 and they filed this application to dispute it on February 11, 2022. Therefore, the tenants are within the fifteen-day time limit under the *Act*. Accordingly, where the tenants apply to dispute the notice in time, the burden of proof is on the landlords to prove the reason on the notice. I informed both parties about the above information during this hearing.

Section 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, states the following, in part, in section "B. Good Faith:"

*In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive.*

*When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*

*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. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).*

*If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.*

*If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.*

*If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.*

*The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.*

I accept the testimony of the landlord and the landlords' advocate, that landlord CM intends, in good faith, to occupy the rental unit. I find that the landlords have no ulterior motive to end this tenancy. The landlord and the landlords' advocate both provided affirmed testimony that landlord CM, who already lives in the upper suite of the house, intends to move into the rental unit and reside in the entire house property. I accept their affirmed testimony that landlord CM is almost 70 years old, he plans to retire in September 2022, he has a stage 4 cancer medical diagnosis, he is awaiting brain surgery, and he wants to live in a peaceful, restful, and stress-free environment for his remaining days.

Neither the tenant, nor the tenants' advocate, disputed landlord CM's medical diagnosis or medical information provided at this hearing. Therefore, I find that the landlord and



the landlords' advocate provided undisputed, affirmed testimony regarding landlord CM's medical diagnosis and information, at this hearing.

I find that the tenants were unable to provide sufficient evidence to dispute the landlords' 2 Month Notice and to support their assertion that landlord CM does not intend, in good faith, to occupy the rental unit.

The tenants and the tenants' advocate did not indicate any of the following at this hearing: that there were any previous RTB hearings between both parties, any other notices to end tenancy issued by the landlords to the tenants, any other comparable vacant rental units in the property that the landlord could occupy, that the landlord's intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, or evidence to show that the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, to suggest that the landlord is not acting in good faith. This is as per Residential Tenancy Policy Guideline 2A above.

The tenants' advocate identified issues regarding repairs to the rental unit and landlord CM's reluctance to complete repairs or to blame the tenants for same. I accept the landlord's testimony that all indoor repairs were completed to the rental unit and that any exterior repairs remaining are weather-dependent and the landlords hired contractors for same. I find that this is a long-term tenancy of over 10 years, from February 21, 2021 to the current date of May 19, 2022. The tenants have continued to reside in the rental unit, despite the repair issues they identified at this hearing.

The tenants' advocate identified a legal notice of rent increase that was issued to the tenants three days after the 2 Month Notice was served to the tenants, claiming that there was no intention for landlord CM to move into the rental unit. I accept the landlord's testimony that rent increases could not be issued during the covid-19 pandemic, so the landlords issued one at the first opportunity available. During the covid-19 pandemic, rent increases were not permitted by the RTB between March 2020 and December 2021. Legal rent increases were only permitted by the RTB beginning on January 1, 2022. I find that the landlords' rent increase, which the tenants' advocate said was effective February 1, 2022, does not show a bad faith intention, as the landlords are permitted to exercise their legal right to a rent increase under the *Act* and it was effective after the 2 Month Notice was issued, not before. I find that it does not negate the landlords' intention to move into the rental unit, since it was issued effective February 1, 2022, and the effective date on the 2 Month Notice is April 1, 2022. The tenants have not vacated the rental unit on the effective date of April 1, 2022 and

continue to remain there on the date of this hearing, May 19, 2022. The tenants did not dispute the amount of the rent increase or that it was given legally under the *Act*, at this hearing. Tenants are not permitted to dispute legal rent increases pursuant to section 43 the *Act* and the allowable amount as per the *Regulation*.

Based on a balance of probabilities and for the above reasons, I find that landlord CM intends to move into the rental unit in good faith to occupy it. I find that the landlords have met their onus of proof under section 49 of the *Act*.

I dismiss the tenants' application to cancel the landlords' 2 Month Notice, without leave to reapply. Pursuant to section 55 of the *Act*, I grant an order of possession to the landlords effective two (2) days after service on the tenants. The effective date on the 2 Month Notice of April 1, 2022, has long passed, since it is now May 19, 2022, on the date of this hearing. The landlord requested an immediate order of possession during this hearing. I find that the landlords' 2 Month Notice, dated January 27, 2022, complies with section 52 of the *Act*.

During this hearing, the tenants' advocate requested an "extension" order of possession date for July 1, 2022. During this hearing, I informed the tenant and the tenants' advocate that I was not required to grant an extension or later order of possession date of July 1, 2022. I notified them that I could issue a two (2) day order of possession against the tenants. They confirmed their understanding of same.

Since I have ended this tenancy, the remainder of the tenants' application is dismissed without leave to reapply. The claims in the remainder of the tenants' application relate to an ongoing tenancy only and are moot.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

### Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective two (2) days after service on the tenant(s). The tenant(s) must be served with this Order. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: May 19, 2022

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Residential Tenancy Branch