



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sutton Westcoast Realty RG Management  
Services and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, OLC, MNDCT, FFT

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order for the Landlord’s compliance - Section 62;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm the receipt and exchange of each other’s evidence packages and that no recording devices are being used for the hearing.

### Preliminary Matters

The Tenant clarifies that the order for compliance is in relation to the notice to end tenancy. Given this clarification I deal with this claim as part of the claim to cancel the notice to end tenancy. The Tenants confirm that the parties named as Tenant AG and Tenant BG are not persons named as tenants on the tenancy agreement. Given this confirmation any order issued pursuant to this decision will not name these persons.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to the compensation claimed?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started with landlord who is now the person acting as Agent for the Owner as set out on the cover page of this decision. At the outset of the tenancy the Landlord collected \$837.50 as a security deposit. In August 2009 the Agent sold the unit to 3<sup>rd</sup> parties (the “3<sup>rd</sup> Parties”) who registered the property in the Owner’s name. Rent of \$2,049.29 is payable on the first day of each month. On February 28, 2022 the Landlord served the Tenants with a two month notice to end tenancy dated February 28, 2022 (the “Notice”). The Notice is on an old form and sets out that the unit will be occupied by the landlord or the landlord’s close family member. The Landlord subsequently served the Tenants with a 2<sup>nd</sup> notice to end tenancy for landlord’s use on the current approved form but did not obtain any agreement from the Tenants to cancel or withdraw the Notice.

The Landlord states that at the time the Notice was given the Tenants were informed that the child of the Owner’s adult children (the Owner’s grandchild) would occupy the unit. The Tenants state that they were not told who would occupy the unit.

The Landlord states that the Owner became deceased on May 13, 2022 and that the estate is currently in probate. The registered owner has not yet been changed however the Owner’s adult children, the 3<sup>rd</sup> Parties, expect the property to be registered in their name.

The Tenants clarify that their claim for compensation is a claim for recovery of the filing fee and for the costs of a title search used as evidence for this dispute.

### Analysis

Section 52(e) of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must when given by a landlord, be in the approved form. Policy Guideline #11 provides that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. As the Landlord did not obtain the Tenants' consent or agreement to withdraw the Notice to be replaced by the 2<sup>nd</sup> notice to end tenancy, I find that the Notice was not withdrawn and is therefore the proper subject of this dispute. Based on the undisputed evidence that the Notice is not on the current approved form I find that the Notice is not effective to end tenancy. Further without the information now required on the approved form not being contained on the Notice I consider that to amend the Notice could prejudice the Tenants' possible future rights in relation to the Notice. I therefore cancel the Notice and the tenancy continues.

The Landlord remains at liberty to serve another notice to end tenancy for landlord's use on the approved form. I encourage the Landlord to review the Act to ensure that any person identified on any new notice is eligible under the Act to occupy the unit.

As the Tenants have already claimed recovery of the filing fee and as the Act does not provide for compensation to prepare or participate in the dispute process, I dismiss the compensation claim. As the Tenants have been successful with their claim to cancel the Notice, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee, and they may deduct this amount from future rent payable.

### Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenants an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court 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 Act.

Dated: June 23, 2022

---

Residential Tenancy Branch