



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, OLC, DRI, FFT

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use dated January 31, 2022 (the "Two Month Notice") pursuant to section 49;
- an order that the Landlords comply with the Act, the regulations, or tenancy agreement pursuant to section 62;
- an order to cancel a rent increase above the amount allowable under the Act pursuant to section 41; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlords NC and BC, the Tenant, and the Tenant's brother AF attended the hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibits unauthorized recordings of dispute resolution hearings. They confirmed that they were not recording this dispute resolution hearing.

### Preliminary Matter – Correction of Dispute Address

NC testified that the dispute address should be "Dr" for "Drive", instead of "Rd" for "Road". I have amended the dispute address on this application accordingly.



### Preliminary Matter – Service of Dispute Resolution Documents

The Landlords acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence. I find the Landlords were served with these materials in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged receipt of the Landlord's documentary evidence via registered mail on May 4, 2022. The Tenant argued that the Landlords' documentary evidence was served late.

Rule 3.15 of the Rules of Procedure states in part:

Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find the Landlords served their documentary evidence on the Tenant more than 7 days before this hearing, in accordance with Rule 3.15 of the Rules of Procedure and section 88(c) of the Act. Accordingly, I allow the Landlords' documentary evidence to be admitted for the purpose of this hearing.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Two Month Notice?
2. If the Tenant is unsuccessful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession?
3. Is the Tenant entitled to an order that the Landlords comply with the Act, the regulations, or tenancy agreement?
4. Is the Tenant entitled to an order cancelling a rent increase that is above the amount allowed by law?
5. Is the Tenant entitled to recover the filing fee for this application from the Landlords?

### 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 arguments



relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

The parties agreed as to the following particulars of the tenancy:

- The tenancy is a verbal, month-to-month tenancy that commenced on December 6, 2016.
- Rent is currently \$450.00, due on the first day of each month.
- The Tenant paid a security deposit of \$225.00, which is held by the Landlords.

A copy of the Two Month Notice has been submitted into evidence. The Two Month Notice is dated January 31, 2022, with an effective date of March 31, 2022. The Two Month Notice indicates that the rental unit will be occupied by the child of the landlord or landlord's spouse.

During the hearing, the Landlords gave their submissions and evidence first.

NC stated that the Landlords are joint owners of the rental unit.

NC testified she issued the Two Month Notice because her youngest son and his children moved back into town and need a place to stay. NC confirmed her son and his children are temporarily staying in a guest suite (unit #32). NC stated the guest suite is used when the Landlords or their tenants have company, and that the Landlords do not charge for this suite.

NC confirmed a copy of the Two Month Notice was given in person to AF on January 31, 2022. The Tenant acknowledged receipt of the Two Month Notice.

NC argued the Tenant will not be "left homeless" as the Tenant has another home in a neighbouring city.

The Tenant confirmed she has a place in another city that she uses on the weekends, which is about an hour's drive away. The Tenant stated she works in the dispute city and uses the rental unit as her weekly accommodation.

The Tenant submitted a map of the property, which shows a multi-unit complex with 2-bedroom and 3-bedroom units. The rental unit is identified as unit #31, with 3 bedrooms. The Tenant confirmed she occupies the rental unit with AF and her daughter.



The Tenant testified that the guest suite (unit #32) currently occupied by NC's son is right next door to her unit and has the same floor plan. The Tenant questioned why NC's son and his children cannot stay in unit #32.

The Tenant argued that moving NC's son's family to the rental unit would result in unit #32 becoming vacant, which would lead to "vacant possession" by the Landlords. The Tenant argued that the Landlords are not allowed to keep unit #32 vacant when issuing a notice to end tenancy for landlord's use.

The Tenant testified the Landlords have offered a 2-bedroom unit (unit #53) to AF for \$150.00 more per month than the rent currently paid by the Tenant. The Tenant questioned why unit #53 was not offered to her. The Tenant stated that if they somehow all managed to squeeze into unit #53, the Landlords are still raising the rent and asking for a second deposit, which leads her to question the Landlords' good faith. The Tenant testified that at the previous dispute resolution hearing, the Landlords had tried to raise the rent beyond the allowable amount.

The Tenant testified that there are other 3-bedroom units in the complex with single occupants. The Tenant questioned why those tenants were not offered unit #53, which would free up another 3-bedroom unit to accommodate the Tenant, the Tenant's daughter, and AF. In her written submissions, Tenant questioned why unit #42 and #54 sat empty for long periods of time before being re-rented.

The Tenant stated that AF did approach the Landlords about getting his own apartment prior to June 2020, but since the parties' previous dispute resolution hearing in August 2020, he has not approached the Landlords again. The Tenant testified the Landlords issued the Two Month Notice, and then approached AF about getting his own apartment.

AF testified he paid the Landlords a \$300.00 security deposit for unit #53, so that he would not "end up homeless" in the event that the Two Month Notice is upheld. AF confirmed he would prefer not to move at this time, and would be happy to remain the Tenant's roommate in the rental unit.

The Tenant testified the Landlords had attempted to evict AF from the rental unit during the parties' previous dispute resolution proceeding.



The Tenant argued the Landlords have an ulterior motive of evicting the Tenant for standing up for her rights and that the Landlords' purpose is to issue a substantial rent increase.

The Tenant also submitted screenshots of chat messages which show that she attempted to have a discussion with NC after receiving the Two Month Notice, but was "ignored for the most part".

In rebuttal, NC explained that unit #53 is a 2-bedroom unit, and that the Tenant herself stated it would not accommodate the Tenant, AF, and the Tenant's daughter.

NC testified AF has been on a waiting list for an apartment for 3 years. NC testified she asked AF in November 2021 and was told that he wanted to remain on the waitlist.

NC gave further testimony regarding the status of other units in the complex as follows:

- Unit #43 is not available as it has been gutted by a fire. It is currently being used for storage only.
- Unit #54 is undergoing renovation. Once the renovation work is completed, the tenant currently occupying unit #53 will move into unit #54. That tenant had previously asked to move into unit #54 and the Landlords had promised she could do so.
- Unit #53 will need a bit of minor repair, including paint, and will then be ready for occupancy. NC could not provide a move-in date for unit #53, but confirmed that it will be ready "within the next couple of weeks".
- Unit #63 is occupied by NC's other son and daughter-in-law.

NC stated that rents have been "ridiculously" low. NC stated the Landlords have not asked to increase the rent.

NC stated it would be "inconvenient" to use unit #53 as a guest suite. She indicated that unit #32 is furnished, so the Landlords would have to "move everything out". In the Landlords' written submissions, the Landlords state as follows:

*Unit 32 is not a VACANT unit. It is a fully furnished unit. It is kept as a guest suite for our use when we have visitors as well as being available for tenants to use for the same reason. It has also been used to help stranded tourists, and emergency accommodations at no charge.*



*Our son and his family are currently using 32 until they can get their own place. Aside from some personal items most of their stuff is in storage and as such the children have a minimum of familiar items at hand. Our son would like a permanent place for his family so they can get back to a more normal living situation.*

*We rented unit 32 last summer to the couple working for [redacted] as interpreters. They had sub-let from a tenant the year before but that unit was not available last year. [redacted] had contacted me asking if we had any accommodations so after some thought and given the covid 19 restrictions we were not expecting any company so chose to rent to them for the summer. We had a rental agreement with [redacted] and she paid rent directly to us. We never had an arrangement with [redacted] for renting 32.*

NC testified that at the previous dispute resolution proceeding, AF had moved into the rental unit without the Landlords' permission, which led the Landlords to issue an eviction notice. NC explained that notice ended up being unenforceable because it wasn't properly completed.

NC testified the Landlords offered the Tenant to sign a written tenancy agreement following the previous dispute resolution hearing, as per the instructions of the previous Arbitrator, but the Tenant refused to sign unless she was given 2 parking spaces. NC stated there weren't any parking spaces that could be given to the Tenant, so the parties still have not yet sign a written tenancy agreement.

### Analysis

The standard of proof in a dispute resolution hearing 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.

#### *1. Is the Tenant entitled to cancellation of the Two Month Notice?*

Pursuant to section 49(3) of the Act, a landlord is permitted to end a tenancy if the landlord or a close family member of the landlord intends, in good faith, to occupy the rental unit.



Section 49(1) of the Act defines a landlord as an individual who, at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest. Under section 49(1), a “close family member” includes an individual’s child.

In this case, I find that NC, as a joint owner of the property, is a “landlord” within the meaning of section 49(1) of the Act. I further find that NC’s son qualifies as “a close family member of the landlord” for the purposes of section 49(3) of the Act.

Section 49(7) of the Act requires the notice given by the landlord under section 49(3) to comply with section 52, which states:

**Form and content of notice to end tenancy**

- 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.

Section 49(2)(a) further requires that the effective date of a landlord’s notice under section 49(3) must be:

- i. not earlier than 2 months after the date the tenant receives the notice,
- ii. the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- iii. if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I have reviewed a copy of the Two Month Notice and find that it complies with the requirements set out in sections 52 and 49 of the Act.

Based on the parties’ testimonies, I find that the Tenant was served with a copy of the Two Month Notice on January 31, 2022, in accordance with section 88(e) of the Act.



Section 49(8)(a) of the Act permits a tenant to dispute a two month notice to end tenancy for landlord's use with 15 days of receiving such notice. Therefore, the Tenant had until February 15, 2022 to dispute the Two Month Notice. The records of the Residential Tenancy Branch disclose that the Tenant submitted this application on February 5, 2022. I find the Tenant made this application within the 15-day dispute period required by section 49(8)(a) of the Act.

When a tenant makes an application to dispute a two month notice to end tenancy, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the notice and to demonstrate good faith in issuing the notice.

[Residential Tenancy Policy Guideline 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member](#) states:

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. (emphasis added)

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 RTA or the tenancy agreement. (emphasis added)

[Policy Guideline 2A](#) further states:

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.

In this case, I find the Landlords have not met the burden of establishing good faith with no dishonest or ulterior motive for ending the tenancy.



I find the Landlords have not clearly demonstrated that there are no comparable vacant units for NC's son and his children to occupy:

- Firstly, I find the Landlords did not provide any compelling reason as to why unit #53 could not be made into a guest unit so that NC's son and his family can remain in unit #32. To the extent that the Landlords' reason is the inconvenience of having to move furnishings from unit #32 to #53, I do not find this argument to be compelling given that some degree of moving and re-furnishing will also need to take place if the NC's son and his children were to move into the rental unit instead.
- Secondly, there is insufficient evidence before me to explain why unit #53 would be unsuitable for NC's son and his children to live in.

Moreover, I find there is evidence of disagreement between the parties, including the parties' previous dispute resolution hearing and the parties' continued inability to sign a written tenancy agreement. I also find that rent is a motivation for the Landlords, based on the Landlords' past attempt to raise rent beyond the allowable amount and NC's comment about low rents during the hearing.

Upon reviewing the chat message screenshots submitted by the Tenant, I find that when the Tenant tried to discuss the matter with NC after receiving the Two Month Notice, NC was reluctant to communicate with the Tenant or provide more detailed explanations. I find that this type of response is less indicative of good faith on the part of the Landlords.

Thus, based on all of the evidence I have before me, I am unable to conclude that the choice for NC's son and his children to move into the rental unit was made in good faith without any dishonest or ulterior motive. I am unable to conclude that the rental unit was chosen solely for valid reasons unrelated to the Tenant. Due to the above-mentioned factors, including the availability of other possible living arrangements for NC's son's family, the fact that the Landlords offered unit #53 to AF for higher rent, NC's complaint about low rents, and the parties' prior dispute resolution history, I am doubtful as to whether the Landlords issued the Two Month Notice in good faith.

Accordingly, I order that the Two Month Notice be cancelled and of no force or effect.

I note that the Tenant in her submissions had raised an argument about vacant possession. [Policy Guideline 2A](#) explains "vacant possession" as follows:



### **Vacant possession**

Other definitions of “occupy” such as “to hold and keep for use” (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (see Section E). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

In my view, the concept of vacant possession is not applicable in the circumstances. There is no evidence to suggest the Landlords intend to end the tenancy so that they can leave the rental unit vacant and unused. The fact that unit #32 next door may become vacant does not constitute vacant possession of the rental unit.

### *2. Are the Landlords entitled to an Order of Possession?*

Section 55(1) of the Act states:

#### **Order of possession for the landlord**

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.

As the Tenant has been successful in cancelling the Two Month Notice, I find that the Landlords are not entitled to an Order of Possession under section 55(1) of the Act.

### *3. Is the Tenant entitled to an order that the Landlords comply?*

The Tenant seeks an order that the Landlords comply with the Act, regulation, or the tenancy agreement. The Tenant argues that the Landlords are using the Two Month Notice as a loophole to evict without cause and sign a new agreement with a 33% rent increase.



As I have already ordered the Two Month Notice to be cancelled, I find it is not necessary to issue any orders requiring the Landlords to comply with the Act, regulation, or the parties' verbal tenancy agreement.

I dismiss the Tenant's claim under this part, with leave to re-apply.

*4. Is the Tenant entitled to an order cancelling an illegal rent increase?*

The Tenant argues in this application that the Landlords are attempting to have a new agreement signed in order to collect a rental increase of 33% (\$150.00).

Section 41 of the Act requires that a Landlord must not increase rent except in accordance with the Act. Part 3 the Act and Part 4 of the Residential Tenancy Regulation contain various rules and stipulations regarding rent increases.

In this case, I do not find that the Landlords have attempted to increase rent illegally by offering a new tenancy agreement. The parties agree that the new tenancy agreement was offered to AF for another unit (unit #53), under which rent is \$150.00 more than the rent currently paid by the Tenant for the rental unit. I find that offering a new tenancy agreement with higher rent for a different unit, albeit a smaller one, does not amount to increasing the rent for the rental unit itself. These are two separate tenancies.

Accordingly, I dismiss the Tenant's claim under this part without leave to re-apply.

I attach the following relevant guidelines on rent increases for the parties' reference:

- [Rent Increases – Province of British Columbia](#)
- [Residential Tenancy Policy Guideline 37. Rent Increases](#)

*5. Is the Tenant entitled to recover the filing fee?*

As the Tenant has been successful in cancelling the Two Month Notice, I award the Tenant reimbursement of her filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to deduct \$100.00 from rent payable to the Landlords for the month of July 2022.



Conclusion

The Two Month Notice dated January 31, 2022 is cancelled and of no force or effect.

The Tenant is authorized to deduct \$100.00, on account of the filing fee awarded for this application, from rent payable to the Landlords for the month of July 2022.

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: June 2, 2022

---

Residential Tenancy Branch