



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant AP: CNL ,FFT

Tenant AG: CNL, FFT

### **Introduction**

This hearing was convened pursuant to Applications for Dispute Resolution made by the Tenant AP and the Tenant AG on March 31 and April 5, 2022, respectively. The applications concern separate rental units at the same rental property and have been joined to be heard together, pursuant to the Rules of Procedure.

The Tenant AP applied for the following relief pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2022; and
- an order granting recovery of the filing fee.

The Tenant AG applied for the following relief pursuant to the Act:

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2022; and
- an order granting recovery of the filing fee.

The Two Month Notices to End Tenancy for Landlord's Use of Property referenced above are referred to collectively throughout this decision as the Two Month Notices.

The Tenants attended the hearing on their own behalf. The Landlord attended the hearing briefly but asked that he be permitted to disconnect and have ST provide evidence on his behalf. The Landlord disconnected from the hearing and did not participate further. In addition, although ST referred to calling her realtor as a witness, he did not attend the hearing to provide testimony. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant AP testified the Landlord was served with the Notice of Dispute Resolution Proceeding package by registered mail on or about April 2, 2022. ST acknowledged receipt of these documents on behalf of the Landlord.

The Tenant AG testified the Landlord was served with the Notice of Dispute Resolution Proceeding package by regular mail on May 19, 2022. ST acknowledged receipt of these documents on behalf of the Landlord.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. As a result, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The Landlord did not submit documentary evidence in response to either of the Tenants' applications.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Are the Tenants entitled to an order cancelling each of the Two Month Notices?
2. Are the Tenants entitled to recover their respective filing fees?

### Background and Evidence

The parties agreed that the Tenant AP occupies Unit C, and that the tenancy began on April 15, 2020. Rent of \$1,100.00 per month is due on the first day of each month. The Tenant AP paid a security deposit of \$500.00 which the Landlord holds. A copy of the tenancy agreement was submitted into evidence.

The parties agreed that the Tenant AG occupies Unit B, and that the tenancy began on May 1, 2021. Rent of \$1,400.00 per month is due on the first day of each month. The Tenant AP paid a security deposit of \$700.00 which the Landlord holds. A copy of the tenancy agreement was submitted into evidence.

ST testified that she and the Landlord purchased the rental property in March 2022 and assumed the existing tenancies.

The parties agreed that the Two Month Notices were served on the Tenant AG in person on March 31, 2022, and on the Tenant AP by attaching a copy to his door on March 31, 2022. The Tenants each confirmed receipt of the Two Month Notices on March 31, 2022. The Two Month Notices submitted into evidence were signed and dated by the Landlord, give the respective addresses, state the effective dates, state the grounds for ending the tenancy, and are in the approved form.

The Two Month Notices were issued on the basis that the Landlord or the Landlord's spouse will occupy the rental units. However, ST testified that she and the Landlord are co-owners of the rental property, not spouses. Both ST and the Landlord currently live in the Lower Mainland but want to relocate to Vancouver Island where property is more affordable. ST also testified that they want to move because the rental units will meet their families' needs in the future. ST testified that her spouse and child intend to occupy Unit C (currently occupied by the Tenant AP), and that the Landlord intends to occupy Unit B (currently occupied by the Tenant AG).

In response to the testimony of ST, the Tenant AP described the suggestion that they are going to occupy the rental units as "absolutely ridiculous". He testified there are two 2-story units in the rental property that are currently vacant, whereas the units occupied by the Tenants are small, 2-bedroom units.

In response to the testimony of ST, the Tenant AG testified that when she was served with the Two Month Notice, the Landlord advised that he and his wife were going to occupy Unit B and Unit C. She testified that she was never made aware of a co-owner.

ST acknowledged that there are larger vacant units but that these are not useful because she and the Landlord have small families. ST also testified that the units that are currently vacant will be rented to generate income.

### Analysis

Considering the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 49(3) of the Act permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, the Landlord issued the Two Month Notices on the basis that the Landlord or the Landlord's spouse will occupy the rental units.

After careful consideration of the evidence of the parties, I find there is insufficient evidence before me to uphold the Two Month Notices. Specifically, I find that the evidence provided by ST – that she and her family would occupy Unit C and that the Landlord would occupy Unit B – contradicts what is indicated in the Two Month Notices. The Two Month Notices indicate that both the Landlord and the Landlord's spouse would occupy the rental units. ST is not the Landlord's spouse and is not named in either of the Two Month Notices.

In addition, I note that the Landlord did not submit any documentary evidence in support of the Two Month Notices. Further, despite being given an opportunity at the end of the hearing to provide further testimony in support of the Two Month Notices, ST did not provide additional or sufficient evidence to support ending the tenancies.

Considering the above, I find that the Two Month Notices are cancelled and are of no force or effect. The tenancies will continue until otherwise ended in accordance with the Act.

As the Tenants are successful, I order that the Tenants are entitled to recover the \$100.00 filing fees paid to make their applications. I order that each of the Tenants may deduct \$100.00 from a future rent payment in recovery of the filing fees paid.

Conclusion

The Two Month Notices are cancelled and are of no force or effect. The tenancies will continue until otherwise ended in accordance with the Act.

Each of the Tenants are permitted to deduct \$100.00 from a future rent payment in recovery of the filing fees paid.

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: July 22, 2022

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Residential Tenancy Branch