



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, MNDCT

### 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 April 10, 2022 ("2 Month Notice"), pursuant to section 49;
- a monetary order of \$7,960.00 for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

The two landlords, landlord SM ("landlord") and "landlord RM," and the two tenants, "tenant TS" and tenant EG ("tenant") 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 lasted approximately 60 minutes.

This hearing began at 1:30 p.m. with me, the two landlords, and tenant EM present. The tenant called in late at 1:45 p.m. This hearing ended at 2:30 p.m.

The two landlords and the two tenants confirmed their names and spelling. The landlord and tenant EM provided their mailing addresses for me to send this decision to both parties after the hearing.

The two landlords stated that they co-own the rental unit. The landlords provided the rental unit address. The landlord identified himself as the primary speaker for the landlords at this hearing.

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 two landlords and the two tenants all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision.

The landlords confirmed receipt of the tenants’ application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both landlords were duly served with the tenants’ application.

The landlords confirmed that they submitted written evidence, which is a job offer letter, for this hearing to the RTB, but it was not served to the tenants. The tenant confirmed that no evidence was received by the tenants from the landlords. I informed the landlords that I could not consider their written evidence at this hearing or in my decision because it was not served to the tenants, as required by section 88 of the *Act* and Rule 3.15 of the RTB *Rules*.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants’ application to correct the spelling of the two landlords’ first names. The two landlords confirmed the correct spelling of their first names during this hearing. I find no prejudice to either party in making these amendments.

Tenant TS confirmed receipt of the landlords’ 2 Month Notice on April 10, 2022, by way of leaving a copy in the door crack. The landlords stated that they served the notice on the above date using the above service method. In accordance with section 71(2)(c) of the *Act*, I find that both tenants were sufficiently served with the landlords’ 2 Month Notice on April 10, 2022. Although leaving a copy of the 2 Month Notice in a door crack is not permitted by section 88 of the *Act*, the tenants confirmed receipt of the notice, they reviewed it and disputed it in this application, and they provided evidence and submissions regarding the notice.

#### Preliminary Issue – Inappropriate Behaviour by Tenant TS during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

*6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*  
*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout this hearing, tenant TS repeatedly interrupted me, argued with me, and spoke at the same time as me. I repeatedly cautioned tenant TS, but he continued with this inappropriate behaviour.

I informed tenant TS that I was required to repeatedly mute his telephone line during this hearing because he continuously interrupted me, and I could not hear properly or conduct the hearing effectively.

However, I allowed tenant TS to attend the full hearing, despite his inappropriate behaviour, in order to allow him to present the tenants' application and to respond to the landlords' submissions.

#### Preliminary Issue – Severing the Tenants' Monetary Application

The following RTB *Rules* are applicable and state (my emphasis added):

##### *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.***

##### *6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

At the outset of this hearing, I informed both parties that Rule 2.3 of the RTB *Rules* allows me to sever issues that are not related to the tenants' main urgent application.

I informed the tenants that they were provided with a priority hearing date, due to the urgent nature of their application to cancel the landlords' 2 Month Notice. I informed them that this was the central and most important, urgent issue to be dealt with at this hearing. After 60 minutes in this hearing, there was insufficient time to deal with the tenants' monetary claim, as the maximum time for this hearing was 60 minutes.

The tenants amended their application on May 31, 2022, to add their monetary claim. I notified the tenants that their monetary claim was dismissed with leave to reapply. I informed them that they received a priority hearing date for the end of tenancy issue, as their monetary claim was a non-urgent lower priority issue, and it could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. The tenants confirmed their understanding of same.

I notified the tenants that they could file a new application, if they want to pursue their monetary claim in the future. They confirmed their understanding of same.

Throughout this hearing, the tenants repeatedly argued with me about my decision to sever their monetary application. They repeatedly stated that they properly filed their monetary application and it had to be heard at this hearing. I was required to repeatedly inform the tenants throughout this hearing, that their monetary claim was severed and that I could not deal with it at this hearing for the above reasons.

### Issues to be Decided

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

### Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of both parties at this hearing, 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.

Both parties agreed to the following facts. A security deposit of \$275.00 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.

Landlord RM stated that rent of \$800.00 is due each month for this tenancy but the tenants have only been paying \$750.00 per month. Tenant TS stated that rent of \$750.00 is due per month and the tenants have been paying this amount to the landlords.

The tenants confirmed that they seek to cancel the landlords' 2 Month Notice. The landlords confirmed that they dispute the tenants' application and seek an order of possession against the tenants.

A copy of the landlords' 2 Month Notice was provided for this hearing. Both parties agreed that the effective move-out date on the notice is August 31, 2022, indicating the following reason for seeking an end to this tenancy:

- *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 child of the landlord or landlord's spouse.*

Landlord RM testified regarding the following facts. Her daughter will be moving downstairs to the rental unit because she needs her own space. The landlords provided four months' notice for the tenants to find another unit. Tenant TS is not friendly with the landlords' dog.

The landlord testified regarding the following facts. Tenant TS keeps saying that he is waiting for BC Housing to find a new place, but it has been more than a year. The landlords are still waiting, as they were told this a long time ago.

Tenant TS testified regarding the following facts. The landlords have no concept regarding BC Housing. The landlords want to double the rent at the rental unit. The landlords did not provide any provincial legal rent increases to the tenants. The landlords have asked for hundreds of dollars more for rent from the tenants.

The tenant testified regarding the following facts. She does not live at the rental unit, but she visits her husband, tenant TS, there. Tenant TS pays \$550.00 per month to the

landlords and the tenant pays an additional \$200.00 per month. The landlords do not want to deal with tenant TS. Tenant TS asked the landlords for legal forms for the rent increases. The tenant has given more than the rent increase every year to the landlords, but it is not enough. The landlords confronted the tenant about getting \$200.00 per month more in rent, but that is too much. The landlords then said that the rental unit was an illegal suite. The tenants have been paying double the rent. The tenant paid the extra rent of \$200.00 per month and kept it a secret from her husband, tenant TS. The tenants are paying low rent compared to the other two units. The tenants have not received any rent receipts from the landlords. The landlords shut off the water and heater for six months because they said it was not required during spring and summer.

Tenant TS stated the following facts. He does not appreciate the landlords asking his wife, the tenant, for more rent. This is an illegal way to increase the rent and the tenants have paid \$8,000.00 in rent increases. The landlords are screening three "Indian girls" from their family, upstairs at the rental property.

Landlord RM stated the following in response to the tenants' submissions. The tenants have gone many years, about 6 to 7 years, with no rent increases. So, for the last four to five years, the landlords have increased the rent. The tenants paid \$750.00 per month for many years for rent. The landlords cannot talk to tenant TS about tenancy issues. There was a water leak in the faucet, which cost the landlords a \$2,500.00 deductible. The water leak occurred by accident, not on purpose.

### Analysis

#### Burden of Proof

As noted below, the landlords have the burden of proof, on a balance of probabilities, to prove the reason for issuing the 2 Month Notice to the tenants. The *Act*, *RTB Rules*, and *Residential Tenancy Policy Guidelines* require the landlords to provide evidence of the reason on the 2 Month Notice.

The landlords confirmed receipt of the tenants' application, which includes instructions regarding the hearing process. A document entitled "Notice of Dispute Resolution Proceeding" ("NODRP") was issued by the RTB, which contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*
- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document.

The landlords received a detailed application package from the RTB, including the NODRP document, with information about the hearing process, notice to provide evidence, and links to the RTB website. It is up to the landlords to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlords to provide sufficient evidence of their 2 Month Notice, since they chose to issue it on their own accord.

The following RTB *Rules* are applicable and state the following, 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...*

I find that the landlords did not properly present their evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. During this hearing, the landlords failed to properly go through their reasons and evidence for issuing the 2 Month Notice to the tenants.

This hearing lasted 60 minutes, so the landlords had ample time to present their evidence and respond to the tenants' submissions. I repeatedly asked the landlords if they had any other information to present and if they wanted to respond to the tenants' submissions. I was required to specifically ask the landlords about the allegations made by the tenants regarding the rent increases, since they did not initially respond to it, during this hearing.

### Findings

Subsection 49(3) of the *Act* sets out that landlords may end a tenancy in respect of a rental unit if the landlords or a close family member intends, in good faith, to occupy the rental unit.

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 the date the tenants received the notice. The tenants received the 2 Month Notice on April 10, 2022 and filed their application to dispute it on April 12, 2022, when they filed a fee waiver. The tenants' application is within the 15-day time limit under the *Act*. The onus shifts to the landlords to justify the basis of the 2 Month Notice.

Tenant TS agreed that he updated the tenants' application on April 27, 2022, because he made errors. I find that this was not intentional, and the tenants still filed their application in a timely manner, as noted above.

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 find that the landlords had ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons explained below.

The tenants provided affirmed testimony that the landlords implemented illegal rent increases during this tenancy, that were not provided with the proper three months' notice in accordance with the RTB *Regulation* amount allowed each year. The tenant provided affirmed testimony that the landlords have been collecting extra rent from her privately, without tenant TS's knowledge. The landlords did not dispute the above evidence during this hearing. The landlords agreed that they issued rent increases to the tenants because there were many years prior that they did not increase the rent. The landlords did not provide copies of any RTB approved forms, including notices of rent increase, with the proper three months' notice for rent increases within the allowable RTB *Regulation* amounts, as evidence for this hearing. I find that the

landlords' intention may be to re-rent the unit for higher rent, as this issue was raised by the tenants during this hearing.

The tenants provided affirmed testimony that the landlords shut off their water and heat for six months because the landlords claimed that it was not required in spring or summer. The landlords provided affirmed testimony that they cannot talk to tenant TS regarding this tenancy, so they talk to the tenant instead. The landlords provided affirmed testimony that the tenants are not friendly with the landlords' dog. I find that the above issues demonstrate that there are conflicts and tensions between both parties in this tenancy, which questions the landlords' good faith intention for issuing the 2 Month Notice to the tenants.

As noted above, both parties were given an opportunity to call witnesses at this hearing. The landlords' daughter did not attend this hearing to provide testimony or evidence. The landlords did not provide a letter from their daughter, as evidence for this hearing. The landlords' daughter did not provide written or testimonial evidence that she intends to move into the rental unit in good faith, when she wants to move in, or why she wants to move into the tenants' specific rental unit, as opposed to another unit. As noted above, it is the landlords' burden of proof to show that their daughter intends to move into the rental unit in good faith, as this was reason they said they issued the 2 Month Notice to the tenants.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their burden of proof to show that their daughter intends to move into the rental unit in good faith.

Accordingly, the tenants' application to cancel the landlords' 2 Month Notice is granted. The landlords' 2 Month Notice, dated April 10, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlords are not entitled to an order of possession for landlords' use of property.

### Conclusion

The tenants' application to cancel the landlords' 2 Month Notice is granted. The landlords' 2 Month Notice, dated April 10, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlords are not entitled to an order of possession for landlords' use of property.

The tenants' monetary application for \$7,960.00 is dismissed with leave to reapply.

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: August 16, 2022

---

Residential Tenancy Branch