



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, OLC, MNDCT, RP, PSF, CNL, RR

### Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 32 for repairs to the rental unit;
- an order pursuant to s. 49 to cancel a Two-Month Notice to End Tenancy signed on April 25, 2022 (the “Two-Month Notice”);
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- an order pursuant to s. 65 that the Landlord provide services or facilities;
- an order pursuant to s. 65 for a rent reduction;
- a monetary order pursuant to s. 67 for compensation; and
- return of their filing fee pursuant to s. 72.

O.M. appeared as counsel for the Landlord. P.V. and K.T. appeared on behalf of the property manager. S.A. appeared as the property owner.

The Tenants did not attend the hearing, nor did someone appear on their behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. The hearing was conducted in the Tenants absence as permitted by Rule 7.3 of the Rules of Procedure and concluded after 27 minutes without participation from the applicant Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Landlord’s counsel acknowledged receipt of the Tenants’ application and amendments. Though the Tenants were not present to make submissions on service of their application materials, I find that pursuant to s. 71(2) of the *Act* that the Landlord was

sufficiently served with the Tenants Notice of Dispute Resolution and amendments as acknowledged by them at the hearing.

Landlord's counsel advised that the Tenants were served with the Landlord's evidence, both by posting the evidence to the rental unit door and by way of email, both occurring on August 11, 2022. The Landlord provides proof of service in the form of the email and photographs from the process server showing the evidence posted to the Tenants door. Further, the Landlord provides email correspondence with the Tenant G.C. as proof of service via email. Landlord's counsel acknowledges that email is not an approved form of service, though advised that it had been sent as a courtesy.

Based on the undisputed submissions of Landlord's counsel, I find that the Tenants were sufficiently served with the Landlord's response evidence both by way of email and by posting to the Tenants door on August 11, 2022. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Landlord's evidence on August 14, 2022.

#### Preliminary Issue – Style of Cause

The Notice of Dispute Resolution has the property management company listed as the Landlord whereas the tenancy agreement has S.A. listed as the Landlord. I was advised that S.A. is the property owner.

Landlord's counsel provided submissions with respect to who should properly be named in the style of cause as the Landlord. It was his submission that S.A., as the property's owner, should be the Landlord.

Section 1 of the *Act* defines a "Landlord" as follows:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and

- (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

The property managers may be considered as a landlord under s. 1 of the *Act*. However, the Landlord ought to be the same Landlord as listed in the tenancy agreement unless there have been circumstances, such as the sale of the property, which would warrant the naming of another individual or entity. The tenancy agreement clearly sets out that S.A. is a party to the contract and is identified as the Landlord under tenancy. The property managers are third parties to the tenancy agreement and the Tenants' naming of the property managers as the Landlord in their application is not proper under the circumstances.

Pursuant to s. 4.2 of the Rules of Procedure, I amend the style of cause to reflect S.A. as the Landlord in the application.

#### Preliminary Issue – Tenants' Claims

The Tenants seek various relief under the *Act*. Rule 6.6 of the Rules of Procedure makes clear the onus of proof generally rests with the applicant, though the onus may rest with the respondent landlord if a tenant files to dispute a notice to end tenancy.

The Tenants did not attend the hearing for their own application, this despite the information for calling into the hearing being listed within the Notice of Dispute Resolution. By failing to attend the hearing, I find that the Tenants have failed to prove their claims under ss. 32 (repairs), 62 (order that the Landlord comply), 65 (Landlord to provide services), 65 (rent reduction), and 67 (monetary claim). As the Tenants have failed to discharge the evidentiary burden of proving these claims, I dismiss them without leave to reapply.

Section 49 of the *Act* clearly puts the evidentiary burden of proving the Two-Month Notice was issued in good faith on the Landlord. As such, the Landlord provided submissions with respect to the enforceability of the Two-Month Notices.

#### Issues to be Decided

- 1) Should the Two-Month Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?

3) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The Landlord provides a copy of the tenancy agreement, which provides the following details with respect to the tenancy:

- The Tenants began to occupy the rental unit on March 15, 2021.
- The tenancy was for a fixed term ending on February 28, 2022 after which point the term would continue on a month-to-month basis.
- Rent of \$5,000.00 is due on the first day of each month.
- The Tenants paid a security deposit of \$2,500.00 and a pet damage deposit of \$2,500.00 to the Landlord.

The Landlord's property managers testified to obtaining instructions from the Landlord to issue the Two-Month Notice. Landlord's counsel directed my attention email correspondence between the property manager and the Landlord in which the issue was discussed on March 11, 2022.

Landlord's counsel advised that the Two-Month Notice was served on the Tenants via registered mail sent on April 24, 2022. The Tenant's amendment submitted on May 6, 2022 indicates that the Tenant's received the Two-Month Notice on April 30, 2022.

S.A. provided evidence that the intention is for his mother, who is 82 years old, to move into the rental unit. S.A. testified that his mother had travelled back and forth between his house and his sister's house in another country until the Covid-19 Pandemic struck and has been living with him since 2020.

S.A. further testified that his mother is wishing to have her own space to entertain guests and have visitors. S.A. advised that his mother has been feeling like a guest within his home and feels as though she is imposing on him. S.A. further testified to having dogs and that his mother may have an allergy to the dogs and is less comfortable around dogs generally. S.A. indicated that his mother residing within the rental unit gives her her desired independence while still being close to S.A. and his brother should assistance be required.

Landlord's counsel submitted that the Landlord is not acting in bad faith and that the intention of the Landlord's mother is to occupy the rental unit. Counsel further confirmed that the Tenants continue to reside within the rental unit.

## Analysis

The Tenants seek an order cancelling the Two-Month Notice.

Pursuant to s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice where the landlord or a close family member intends, in good faith, to occupy the rental unit. Section 49(1) of the *Act* defines a close family member as an individual's parents, spouse, or child or the parent or child of that individual's spouse. When a tenant receives a notice issued under s. 49(3) of the *Act*, they may either accept the end of the tenancy or may file an application disputing the notice within 15 days of receiving it as required under s. 49(8).

I have reviewed the Two-Month Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-32).

Based on the undisputed evidence of the Landlord, I find that the Landlord issued the Two-Month Notice in good faith. The Landlord provides affirmed and uncontradicted testimony that his mother intends to occupy the rental unit as she is seeking to have her own personal space to entertain and have guests. Landlord's counsel submitted that the Landlord is not acting in bad faith and that the Landlord's mother intends to occupy the rental unit. I have no reason to disbelieve the Landlord's position based on the evidence presented to me at the hearing.

As I find that the Landlord issued the Two-Month Notice in good faith, I dismiss the Tenants' application to cancel the notice.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord an order of possession pursuant to s. 55(1) of the *Act*.

The dismissal of the Tenants' application cancelling the Two-Month Notice in no way affects their entitlement to compensation under s. 51(1) of the *Act*. Nor does the dismissal affect the Tenant's potential claim under s. 51(2) of the *Act* for compensation equivalent to 12 times the monthly rent should the stated purpose within the Two-Month Notice not be fulfilled within a reasonable period and for at least 6 months.

### Conclusion

The Tenants failed to discharge their evidentiary burden with respect to their claims under ss. 32, 65, 65, 62, and 67. Accordingly, these claims are dismissed without leave to reapply.

The Landlord has established he is acting in good faith. I dismiss the Tenants' application under s. 49 of the *Act* cancelling the Two-Month Notice without leave to reapply.

The Tenants were unsuccessful in their application. I find that they are not entitled to the return of their filing fee. Their claim under s. 72 of the *Act* is dismissed without leave to reapply.

Pursuant to s. 55(1) of the *Act*, the Landlord is entitled to an order of possession. The Tenants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

It is the Landlord's obligation to serve the order of possession on the Tenants. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 *Residential Tenancy Act*.

Dated: August 22, 2022

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Residential Tenancy Branch