



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL, FFT**

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on October 5, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated September 27, 2022; and
- an order granting the return of the filing fee.

The Tenant J.B., the Landlord A.M. and the Landlord's Agent A.G. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are not successful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the two year fixed term tenancy began on October 1, 2020 until September 30, 2022. I note that both parties signed the agreement indicating that the Tenants would vacate the rental unit at the end of the fixed term, for the Landlord's to occupy the rental unit. Currently, the Tenants pay rent in the amount of \$1,600.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$800.00 which the Landlords continues to hold. The tenancy is still ongoing.

The Landlords' Agent testified that they served the Tenants with the Two Month Notice by Registered Mail on September 28, 2022. The Tenant confirmed having received the Two Month Notice and disputed the Two Month Notice on October 5, 2022. The Landlords' reason for ending the tenancy on the Two Month Notice is;

*"The rental unit will be occupied by the Landlord or the Landlord's spouse"*

The Landlords' Agent stated that the Landlords currently reside in the upper portion of the rental property, while the Tenants occupy the lower rental unit. The Landlords' Agent stated that the Landlords intend to use the basement for their own personal use given they have a growing family and wish the use the rental unit as an office for the Landlord's business. As such, the Landlords are seeking vacant possession of the rental unit.

The Tenant stated that the Landlords had posted an advertisement to re-rent the rental unit on July 14, 2022 while the parties were also discussing the possibility of extending the tenancy a further two years, should the Tenants agree to pay the higher rent amount. The Tenants provided a number of text messages between the parties in support of the Landlords intend to re-rent the rental unit for a greater amount.

The Landlords' Agent stated that the Landlords were not aware of their responsibilities during the discussions with the Tenants. The Landlords' Agent stated that they now know that they cannot end the tenancy and re-rent to another occupant for higher rent, nor make the current Tenants pay more than the allowable rent increase. The Landlords' Agent stated that the Landlords had also been searching for an office space and provided a number of listings in support. The Landlords' Agent stated that the Landlords decided to occupy the rental unit as their office, instead of paying rent for office space elsewhere.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 44 of the Act speaks to what can occur at the end of a fixed term tenancy. In this case, the Tenants and the Landlords agreed that the end of the tenancy would be September 30, 2022. I find neither party complied with the vacate clause set out in the tenancy agreement, therefore, I find it no longer enforceable.

A Landlord and Tenant may agree to renew a fixed term Tenancy Agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. In this case, I accept that the parties have not entered into a new tenancy agreement, therefore, I find that the tenancy has automatically continued on a month to month basis on the same terms.

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

The Landlords served the Tenants with the Two Month Notice on September 28, 2022 with an effective vacancy date of December 31, 2022. The Tenant confirmed having received the Two Month Notice and disputed it on October 5, 2022. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act, and that the Tenant disputed the Two Month Notice within the 15 day time limit pursuant to Section 49(8) of the Act.

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.

According to Policy Guideline 2A 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. 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 (section 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 demonstrate 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 accept that the parties had entered into a fixed term tenancy agreement which was meant to end on September 30, 2022 so that the Landlords could occupy the rental unit. I find that the Landlords did not pursue this option, instead, advertised the rental unit for a greater amount of rent. I find that the Landlords also tried to enter into a new two-year fixed term with the Tenants which included an increased amount of rent that the Tenants did not agree to. I find that the Tenants provided sufficient evidence to demonstrate that after refusing to sign the new fixed term tenancy, that the Landlords issued the Two Month Notice.

While the Landlords' Agent stated that the Landlords were not aware of their responsibilities, I find that their true intent just two months prior to serving the Two Month Notice was to enter into a new two year fixed term tenancy for a greater amount of rent. I do not accept that the Landlords are seeking to use the rental unit for their own use, given they had indicated this intent on the tenancy agreement, and chose not to enforce the vacate clause with the Tenants effective September 30, 2022.

In light of the above, I cancel the Two Month Notice, dated September 27, 2022. I order the tenancy to continue until ended in accordance with the Act.

As the Tenants have been successful, I find they are entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from the one (1) future rent payment.

### Conclusion

The Tenants' Application is successful. The Two Month Notice issued by the Landlords dated September 27, 2022 is cancelled. The tenancy will continue until ended in accordance with the Act.

The Tenants are entitled to deduct \$100.00 from one (1) future rent payment for recovery of the filing fee.

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: November 28, 2022

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Residential Tenancy Branch