



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, DRI, OLC, FFT

### Introduction

On February 14, 2023, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a Two Month Notice to End Tenancy for Landlord Use of Property dated January 31, 2023 (“the Two Month Notice”). The Tenants also applied for the following relief:

- To dispute a rent increase
- for an order that the Landlord comply with the Act, regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Landlord and the Tenant’s agent appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. Both parties confirmed that they have exchanged the documentary evidence that I have before 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.

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an

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.

I find that the most important matter to determine is whether or not the tenancy is ending based on the Two Month Notice. The Tenants' other claims are dismissed with leave to reapply.

At an earlier dispute resolution hearing on November 25, 2022, the named Landlords J.D. and C.B. failed to attend the hearing. The Arbitrator found that the Landlords issued invalid rent increases. The Arbitrator granted the Tenants a monetary order for \$4,500.00 and the right to withhold an additional \$1,600.00 from the rent. The Landlords did not apply for a review consideration of the December 14, 2022, Decision and the time to do so has now expired.

The Landlord C.B. argued that the Residential Tenancy Act does not apply to this dispute because he does not meet the definition of a Landlord. He stated that he is a Tenant who rents the residential property from the Landlord, and he then sublets the unit to other tenants for a profit. He submits that the relationship of a renter and subletter is out of scope of the Act.

Mr. C.B. was asked if he holds any ownership rights for the rental unit and he replied "no". He was asked whether he rented the unit out as the owner's agent and he replied "no". Mr. C.B. provided a copy of a tenancy agreement dated April 15, 2012, between himself and the owner of the property. Mr. C.B. stated that he had verbally asked the Landlord for permission to sublet, and then he stated that he cannot recall the details of asking permission..

The Tenants' application names J.D. as a Landlord. J.D. did not attend the hearing. The Tenants' agent testified that on February 16, 2023, the Notice of Dispute Resolution Proceeding was sent by registered mail to J.D. at her mailing address. The Tenants' agent provided a copy of a Canada Post document showing that the registered mail for J.D. was picked up by Mr. C.B. on February 16, 2023.

Mr. C.B. testified that he lives at the address where the registered mail was sent. He was asked if J.D. lives there and he replied that she did live there back in 2006 but does not live there now. He stated that it is her mailing address. He stated that he is a realtor and acts as property manager for J.D. and receives her mail. Mr. J.D. was asked whether he notified J.D. about the registered mail or about this dispute hearing

and he replied “no”. When pressed on why he would not inform J.D. that there was a legal proceeding naming J.D. he replied that he manages the unit for a fee.

The Tenants’ agent then replied and pointed out that Mr. C.B. is managing the property for J.D. The Tenants’ agent stated that she questions the validity of the tenancy agreement provided by C.B. She stated that Mr. C.B. identified himself as the Landlord back in 2018. She pointed out that written permission from a landlord is required to sublet a rental unit.

After considering the testimony and evidence before me I make the following finding.

I do not accept the Landlord’s position that the Act does not apply to this tenancy arrangement. I find that the Landlord provided inconsistent statements on whether he is an agent for J.D. At first he stated he was not, and later he said he was. Mr. C.B.’s responses to my questions were often vague, where he would state that he does not recall details such as whether or not he asked the owner for permission to sublet. I was not assisted by having J.D. present to provide testimony because Mr. C.B. apparently failed to notify J.D. of the hearing. I note that Mr. C.B. was able to sign for the registered mail addressed to J.D.

I have reviewed the tenancy agreement provided by the Tenants. The tenancy agreement makes no mention that the tenancy is a sublease. The tenancy agreement makes reference to the Act and provides that the laws of British Columbia will prevail. The fixed term tenancy that began on May 31, 2018 to end May 31, 2019 was renewed until May 31, 2020 with a stated no option to renew. I note that the Act provides that at the end of a fixed term tenancy, if the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The tenancy agreement provided by C.B. is dated May 1, 2012, and states it is for a one year lease that automatically renews. Mr. C.B. did not provide copies of renewed tenancy agreements. I note that a sublet tenancy must be for a period shorter than the term of the original tenant’s tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit. I find that the Landlord has not provided sufficient evidence to support his position that his tenancy was sublet to the Tenants.

I find that the Act applies to the tenancy agreement. I am not persuaded by Mr. C.B. that the agreement is a sublet agreement and that he is not a Landlord under the Act. I find that Mr. C.B. is acting as an agent for the Landlord J.D.

#### Issues to be Decided.

- Does the Landlord have a good faith intention to end the tenancy to allow a close family member to move into the rental unit?
- Is the Landlord entitled to an order of possession for the rental unit?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began in May 2018. Rent in the amount of \$1,400.00 is due to be paid the Landlord each month. The Tenant paid a security deposit of \$1,400.00.

The Landlord C.B. issued the Two Month Notice to the Tenants by attaching it to the door. The reason for ending the tenancy cited within the Notice is:

*The rental unit will be occupied by the Landlord or the Landlord's close family member. The Father or Mother of the Landlord or Landlords spouse.*

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is March 31, 2023.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute it within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the Two Month Notice on February 14, 2023, within the required time period.

Mr. C.B. was asked whether he is an owner of the rental unit and he replied "no".

#### Analysis

The Landlord issued the Two Month Notice under section 49(3) of the Act. Section 49(1) of the Act provides definitions including the definition of a Landlord. For the purposes of subsection 49(3), a landlord is 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.

I find that Mr. C.B. cannot issue the Two Month Notice for his Father or Mother to live in the unit because, based on his own testimony, he is not an owner of the rental unit.

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated January 31, 2023, is successful. The Two Month Notice is cancelled.

The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or utilities dated March 11, 2023. The 10 Day Notice indicates that the Tenants owe \$1,650.00 for March 2023 rent. The Landlord stated that he issued the 10 Day Notice because the Tenant has a pattern of not paying the rent.

The Tenants' agent stated that the Tenants sent an email to the Landlord stating that they would not be paying March 2023 rent, in accordance with the Arbitrator's decision that they could withhold \$1,600.00 from a future rent payment.

I find that the monthly rent is \$1,400.00 not \$1,650.00 as cited in the 10 Day Notice. I find that the Tenants do not owe March 2023, rent to the Landlord. The Arbitrator's decision of December 14, 2022 clearly states that the Tenants can withhold \$1,600.00 from future rent.

The 10 Day Notice to End tenancy for Unpaid Rent dated March 11, 2023, is cancelled.

### Conclusion

The Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated January 31, 2023, and to cancel the 10 Day Notice to End Tenancy for Unpaid dated March 11, 2023, is successful. Both Notices are cancelled.

The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful with their application, I order the Landlord to repay the \$100.00 of the fee that the Tenants paid to make

application for dispute resolution. I authorize the Tenants to withhold \$100.00 from 1 (one ) future rent payment.

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: March 29, 2023

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Residential Tenancy Branch