



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued by the landlord's agent and recovery of the cost of the filing fee.

The tenants and the landlord's agent (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence and the agent confirmed receipt of the tenants' application.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Background and Evidence

The written tenancy agreement filed in evidence showed a tenancy start date of August 1, 2009, for a monthly rent of \$1,675. The tenancy agreement listed the agent as the landlord/agent. The agent at the hearing said that he owned the home before selling it to the current owners in August 2009, the purchasers assumed the tenancy, and has acted as agent throughout the tenancy.

The evidence shows that the agent issued the tenants the Notice by registered mail and the tenants confirmed receiving the Notice on November 29, 2022. The Notice was dated November 23, 2022, and listed an effective move-out date of January 31, 2023. Filed in evidence was a copy of the Notice.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the child of the landlord or landlord's spouse.

The tenants' application was filed within 15 days after service allowed by the Act to dispute the Notice.

Pursuant to section 7.18 of the Rules, the agent proceeded first in the hearing to give evidence to support the Notice.

The undisputed evidence is that the tenants were issued an earlier 2 Month Notice for the same reason, but that Notice was cancelled through dispute resolution. The reason for cancellation was the current owners were not the registered owners on the land title at that time. The agent said that when he issued the first 2 Month Notice, he was unaware that when he sold the home to the owners in 2009, they put title to the property in their mother's name. The close family member in that case was the owner's granddaughter, which caused the cancellation of the first 2 Month Notice.

The owner's mother is now deceased, and the title to the residential property is currently listed in the name of one of the current owners. The agent provided a copy of the current land title records and the death certificate of the owner's mother.

The agent testified as to the reason this second 2 Month Notice was issued.

The agent said that the owner's 23 year old daughter is currently living with her parents in another city in the area, has graduated from UBC, has a job closer to the rental unit, which is a 2-bedroom condo, and wants to move into the rental unit to be closer to work.

The agent said the owners' long term plan when purchasing the home was for their daughter to live there.

Other than a copy of the 2 Month Notice, the birth certificate for the owner's daughter, the marriage certificate for the owners, and a courtesy email to the tenants, the agent provided no further documentary evidence.

Tenant's response –

The tenants wrote in their application the following:

*Once again Mr. (agent surname) is not acting in good faith in his intention to move us out, and continues to be dishonest with information. Claimed current ownership of (\*\*\*) does not match the name in the 'Title Registry'. Title Registry indicates property is passed down to (\*\*\*) . Please see the attached 5 evidence files.*

[Reproduced as written except for anonymizing personal information to protect privacy]

In a written submission, the tenants state the following:

Mr. [ ] in his 'Notice to end tenancy' email (Evidence1) states:

**"Title and ownership of the property has now been changed...**

**From [ ] (Deceased)**

**To: Her daughter: [ ] (now the legal registered owner)"**

However, if we look at the 'Land Title registry' (Evidence2) property is passed down to [ ], not [ ].

He is incorrect about the ownership.

He is incorrect about [ ]; he is the husband, and the father, not mother.

In his official 'Notice to end tenancy' he served (Evidence3) he continues to be deceptive about ownership, but this time he removes any reference to [ ] being mother or the father.

Since [ ] is not the owner, Mr. [ ] cannot be instructed (Evidence3) by him to give us two months' notice to end tenancy.

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenants said that in the 14 years of their tenancy, they have never met the owners or their daughter. The tenant said the owner and daughter have never come to the rental unit in order for their daughter to look inside to see if she even likes the home or to tell the tenants she wants to move in. The tenants said they do not trust the agent.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Rule 6.6 provides that the *“standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed”*.

Upon review of the Two Month Notice to End Tenancy dated November 23, 2022, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenants in a manner that complies with section 88 of the Act.

In the matters before me, I find neither the landlords nor their agent submitted sufficient evidence to support the reason listed on the Notice.

Neither the owners/landlords nor their child were present at the hearing to provide direct testimony, nor were there supporting documents, such as records of employment, an affidavit or statutory declaration.

I find the hearsay testimony of the agent is insufficient to support the 2 Month Notice. I find it reasonable to conclude that the agent was acting on the request of the owners, but I do not find the agent presented any direct knowledge of the circumstances involving the reason for 2 Month Notice. I would have expected direct evidence from the owners or daughter. As there was not, I find the landlords have not met their burden of proof on a balance of probabilities.

While the tenants raised the good faith intent in their application, I find it is not necessary to consider the good faith of the landlords as there was insufficient evidence that the landlord's child truly intended to move into the rental unit as a living accommodation for at least 6 months.

For the above reasons, I find that the landlords provided insufficient evidence to prove the reason listed on the Notice. I therefore grant the tenants' application.

As a result, I **ORDER** that the 2 Month Notice dated November 23, 2022, for an effective move-out date of January 31, 2023, is **cancelled**, and it is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

For the above reasons, I grant the tenants' application and as a result, I grant the tenants the recovery of the \$100 filing fee. I **authorize** the tenants a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenants should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

### Conclusion

The tenants' application has been granted as I have ordered the 2 Month Notice cancelled and is of no force or effect.

The tenants are granted a one-time rent reduction for recovery of the filing fee.

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

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 14, 2023