



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) and recovery of the filing fee.

The tenants and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

After many inquiries, the tenant could not clearly state whether the landlord was served with their application. The tenant said that they did not serve the landlord with their application and said they did not know to do so. The tenant filed a Canada Post registered mail receipt showing the tenants sent the landlord an envelope. The landlord also could not state clearly what was served, but said it was a letter from the tenant.

I elected to proceed on the tenants' application, despite the confusing testimony of both parties as to whether the tenants' application was served to the landlord.

All 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.

I have reviewed all oral and written 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 here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters-

During the hearing, the tenants disclosed that tenant, ShH, is now deceased. I have therefore excluded ShH from any further consideration in these matters.

Issue(s) to be Decided

1. Should the Two Month Notice to end tenancy issued by the landlord be upheld or cancelled?
2. Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

The tenants' application stated the tenancy began on June 1, 2016, and current monthly rent is \$2,650.

The tenant submitted that the tenancy began with another landlord, who sold the property to the landlord last year. The tenant confirmed that since the residential property was sold, they had been paying monthly rent to the landlord here.

The evidence shows that the landlord issued the tenant the Notice on January 25, 2023, by registered mail. The tenant confirmed receiving the Notice on January 27, 2023.

The 2 Month Notice filed in evidence was dated January 25, 2023, and listed an effective move-out date of May 31, 2023.

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

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

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

The landlord filed a written statement in which he said that he bought the property from his friend in August 2021. The landlord testified that he issued the tenant the Notice because he separated from his wife on December 31, 2022, and has been living with a

friend. The landlord submitted they need to stop living with their friend and just want to move into their own house to have their own space.

The landlord said that although the tenant said there was a 2-year, fixed-term tenancy agreement, there is no such thing.

The landlord wrote that when he took over the property, it was for rental purposes, but now he is living with a friend, he wants his own space.

The landlord agreed that if an order of possession is granted, it could be effective on June 30, 2023.

The tenant wrote in their application the following:

*Every time the lease has come up for renewal, we have paid an increase in rent, and every time it has been for two years. In our opinion, we have a valid lease until May 31st, 2024. For the last several years we have not signed nor received a copy of the lease. Rent increases and extensions in tenancy were agreed to on the phone with the previous landlord (who apparently sold his half of the unit to his partner, the current landlord). Our rent was increased \$50 per month last year.*

[Reproduced as written]

The tenant said that they and the previous landlord had a series of 2 year, fixed-term agreements and this current lease ends on May 31, 2024.

The tenant confirmed that there is no written tenancy agreement indicating a fixed-term tenancy.

### Analysis

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.

I find the Notice to be completed in accordance with the requirements of section 52 of the Act and was served upon the tenants in a manner that complies with section 88 of the Act.

After hearing from the landlord, I find that he genuinely intends to move into the rental unit, after a change in circumstances, which was a marital separation. I find it reasonable that the landlord wants to live in their own home rather than continue to stay with a friend.

I cannot find that the landlord acted dishonestly or had an ulterior motive in issuing the Notice seeking the end of the tenancy.

I do not accept the tenant's assertion that there was a fixed-term agreement through May 31, 2024, without a signed, written tenancy agreement. Apart from that, I find there was insufficient evidence of prior two year agreements.

I therefore find that, upon a balance of probabilities, the landlord has met their burden of proving that he honestly intends to move into the rental unit and that the Notice was issued in good faith.

I therefore find the Notice is valid and enforceable.

As such, I dismiss the tenants' application seeking cancellation of the Notice and recovery of the filing fee, without leave to reapply.

I find that the landlord is entitled to, and I **grant** an order of possession for the rental unit effective at **1:00 pm on June 30, 2023**, as agreed by the landlord at the hearing, pursuant to section 55(1)(b) of the Act.

Should the tenants fail to vacate the rental unit by 1:00 p.m., June 30, 2023, the order must be served to the tenants to be enforceable and may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenants.

The landlord and the tenants are reminded of the provisions of section 51(1) of the Act, which stipulates that a tenant who receives a notice to end a tenancy pursuant to

section 49 of the Act is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

### Conclusion

The tenants' application is dismissed in full, without leave to reapply, as I have upheld the 2 Month Notice.

The landlord has been issued an order of possession for the rental unit, effective at 1:00 pm on June 30, 2023.

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: May 19, 2023

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Residential Tenancy Branch