



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, CNR, FFT

### Introduction

This hearing dealt with two applications by the tenants pursuant to the Residential Tenancy Act (the “Act”).

In the first application, the tenants applied for:

- cancellation of the landlord’s Two Month Notice to End Tenancy Issued for Landlord’s Use of Property (the Two Month Notice) pursuant to section 49; and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

In the second application, the tenants applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to sections 46.

JJ, the landlord appeared at the hearing. TP, GP, and NL, the tenants appeared at the hearing.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding packages and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other’s application materials.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions. TP (the “Tenant”) provided oral testimony on behalf of the tenants.

Issue(s) to be Decided

- Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
- Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
- Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties confirmed that the tenancy began on April 30, 2021, by way of a written tenancy agreement. Monthly rent is \$3,050.00 payable on the first day of each month. The landlord collected a security deposit in the amount of \$1,450.00 and pet deposit in the amount of \$1,450.00 from the tenants, which the landlord continues to hold in trust. A copy of the written tenancy agreement is submitted into evidence.

The landlord testified that they served the tenants with the Two-Month Notice in person on March 20, 2023. The tenants confirmed receipt of the Two-Month Notice on March 20, 2023.

The landlord testified that they served the tenants with the 10-Day Notice by posting a copy to the door of the rental property on May 14, 2023. The tenants acknowledged receipt of the 10-day Notice on May 14, 2023.

The landlord testified that they served the tenants with the Two-Month Notice because they plan to move into the unit. The landlord testified that while they had moved to Coquitlam to assist in caring for their sick father, it was always their intention to move back to their home. The landlord testified that their niece had been occupying a rental unit in the home and managing the rental property; however, because of confrontations with the tenants, their niece moved out.

The landlord testified that someone has to be at the rental property to manage it and that they are planning to live in the rental unit for this purpose. Further, the landlord testified that they were required to move from their residence because of a relationship breakdown. As a result, their furniture is in storage, and they have been sleeping on a

couch at their parents' and brother's residence. The landlord testified that they do not believe they need to explain their personal circumstances to the tenants.

The landlord testified that there are tenants living in the other rental unit on the property. The landlord submitted tenancy agreements with two other tenants into evidence in support of this.

The tenants took issue with the reason stated on the Two-Month Notice. In their application they state:

Landlords explanation does not make any sense. She is a school teacher in coquitlam and lives there full time in her own home, yet she claims she is going to reside in the upper unit of the 2310 balaclava home. She also has her own personal, fully renovated unit on the main floor of the home. This unit is currently occupied by her neice, but she told us her neice is moving out at the end of April. Thus we believe she is being dishonest about moving into the upper unit of the home

[Reproduced as written]

During the hearing, the tenants testified that the landlord advised them during a recorded conversation which is submitted into evidence that she received an eviction notice and was required to move out of her place. The tenants noted that the landlord did not mention anything about an eviction notice in her evidence or testimony at the hearing. The tenants testified that the landlord's story has completely changed. The tenant's testified that the landlord has painted them as bad tenants when they are not.

The tenants testified that it does not make sense the landlord is moving into the upper unit when they could live in the main unit and rent the upper unit for substantially more. The tenants argued that from a financial perspective, the landlord choosing to occupy their unit does not make sense.

### 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure 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.

Based on the affirmed testimony and documentary evidence of the landlord, I find that the landlord has met the onus which is upon them to prove on a balance of probabilities that they intend in good faith to occupy the rental unit for a period of at least six months in accordance with the Act. On that basis, I uphold the Two-Month Notice.

Pursuant to section 55(1) of the Act, if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and,
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the Two Month Notice to End Tenancy dated February 1, 2023, I find that the Notice was 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.

Based on the foregoing, the landlord is granted an order of possession that will be effective on two days service.

Because this tenancy is ending by way of the Two Month Notice, I make no findings regarding the tenant's application to cancel the 10-Day Notice.

As the tenants were unsuccessful in their applications, they are not entitled to recover the filing fee paid for this application from the landlord.

Conclusion

The landlord is granted an order of possession which will be effective two days after service on the tenants. The order of possession must be served on the tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: June 16, 2023

---

Residential Tenancy Branch