



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, PSF, OLC, FFT

### Introduction

On May 3, 2023, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking the provision of services or facilities pursuant to Section 62 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, and the Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Landlord did not dispute that he received the Notice of Hearing package from the Tenants in May 2023. As such, I am satisfied that the Landlord has been duly served with the Tenants' Notice of Hearing package. Service of the parties' evidence was discussed, and while there were issues concerning service, those were addressed during the hearing. As such, I have accepted both parties' evidence and will consider it when rendering this Decision.

At the outset of the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Notice, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Two Month Notice to End Tenancy for Landlord's Use of Property cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2017, that the rent was established at \$1,400.00 per month, and that it was due on the first day of each month. A security deposit of \$650.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Landlord then advised that the Notice was served to the Tenants by attaching it to their door on April 24, 2023, and the Tenants indicated on their Application that they received it on April 25, 2023. As well, the Tenants acknowledged that they understood the Notice was for them at the address for which they resided despite the dispute address being noted differently on the Notice than on the tenancy agreement. The reason the Landlord served the Notice is because "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)." As well, the Landlord indicated that it would be "The landlord or the landlord's spouse" that would be specifically occupying the rental unit. The effective end date of the tenancy was noted as June 30, 2023, on the Notice.

The Landlord testified that the Notice was served because they have had "problems" with the Tenants and that they do not want the "hassle" anymore. When it was brought to his attention that the Notice must be served in good faith, with no ulterior motive, he then advised that he wanted the rental unit back because he is getting old, and he can't navigate stairs. When he was asked if it was his intention to move into the rental unit when the Notice was served, he then stated that it was served because "we may have to move" there in anticipation of a future deterioration of health. He testified that his intention was to reclaim the rental unit as part of his living space, but he had no plan for what he would do with it when the Notice was served. He stated that he would "probably put comfortable furniture" in there and use it as a recreation room.

The Tenants referenced emails submitted as documentary evidence where they complained to the Landlord of unreasonable noises emanating from the upper floor, which went unresolved by the Landlord. It is their position that this is part of the reason that the Landlord is attempting to end the tenancy. They cited their video evidence of the Landlord, or someone associated with the Landlord, using inappropriate profanity towards them, and indicated that this was another example of the Landlord likely not serving the Notice in good faith. They also suggested that the Landlord is not even living upstairs, and someone else has been there for the last one and a half months. Finally, they noted that it is their belief that the Landlord owns other properties that he could possibly live at.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice, in considering the Landlord's reason for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. Furthermore, Section 49 of the *Act* states that the Landlord is permitted to end a tenancy under this Section if they intend in **good faith** to occupy the rental unit.

I also find it important to note that Policy Guideline # 2A discusses good faith and states that:

"The BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith... 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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA... 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."

When reviewing the totality of the evidence and testimony before me, while I have testimony from the Landlord about his desire to move into the rental unit, I note that his initial testimony about why he served the Notice was because he had "problems" with the Tenants and that he did not want the "hassle" anymore. As the Landlord was advised during the hearing, if there were issues caused by the Tenants that would result in a jeopardization of the tenancy, he could have served a One Month Notice to End Tenancy for Cause. Clearly by his own testimony, this Notice was served due to an ulterior motive.

Moreover, when he was informed about the good faith requirement and given another opportunity to clarify his testimony about his intention when serving the Notice, I do not accept his testimony that “we may have to move” as being a definitive reason for service of the Notice as this was clearly a future consideration. Given that he testified that he had no plan for what he would do with the rental unit, I find it reasonable to conclude that this further supports a finding that there was no good faith intention to use the property for the stated purpose. Rather, this Notice was, more likely than not, served as a means for the Landlord to attempt to end the tenancy based on an ulterior motive.

As the burden is on the Landlord to prove why the Notice was served, based on my assessment of the evidence and testimony before me, I am not satisfied, on a balance of probabilities, that the Landlord served this Notice in good faith. As such, I find that the Notice dated April 24, 2023, is cancelled and of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenants to withhold this amount from the next month’s rent.

### Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord’s Use of Property dated April 24, 2023, to be cancelled and of no force or effect.

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 27, 2023

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Residential Tenancy Branch