



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Tenant: CNL, DRI, RP, LRE, OLC, FFT  
Landlord: OPL, MNDCL, FFL

### Introduction

This hearing originally convened on June 13, 2023 and was adjourned to July 17, 2023 due to time constraints. This Decision should be read in conjunction with the June 13, 2023 Interim Decision.

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for landlord's use of property, pursuant to sections 49 and 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord, the landlord's daughter and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants were represented by counsel.

### Preliminary Issue- Service

Both parties agree that they received the other party's application for dispute resolution and evidence. No issues with service were raised in the hearings. I find that the parties were each sufficiently served pursuant to section 71 of the *Act* with the other's application for dispute resolution and evidence.

### Preliminary Issue- Witnesses

In the second hearing the landlord sought to call two witnesses. Counsel objected to the witnesses being called because the landlord presented their case in the first hearing and did not call the witnesses.

Residential Tenancy Branch hearings do not adhere to the Rules of Court, and I am not bound by them. In the hearing I permitted the landlord's witnesses to provide testimony. I find that the tenants were not prejudiced by the calling of the witness as the tenants and their counsel had an opportunity to cross examine the witnesses and to provide responses to their testimony.

The landlord called witnesses KK and AG and the tenant called witness KC. All witnesses affirmed to tell the truth.

### Issues

1. Are the tenants entitled to cancellation of the Notice, pursuant to section 49 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Is the landlord entitled to an Order of Possession for landlord's use of property, pursuant to sections 49 and 55 of the *Act*?
4. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. As set out in Rule 7.4 of the Residential Tenancy Branch Rules of Procedure, evidence not presented may not be considered. Only the relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on October 1, 2014
- Monthly rent in the amount of \$2,485.56 is payable on the first day of each month

- A security deposit of \$1,045.00 was paid by the tenants to the landlord
- A pet damage deposit of \$1,045.00 was paid by the tenants to the landlord
- The subject rental house has a basement and upper suite
- The subject rental property is the upper suite
- The agent personally served the tenants with the Notice on February 13, 2023

The Notice dated February 13, 2023 was entered into evidence and states:

- The tenants must move out of the rental unit by April 30, 2023
- 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)
- The landlord checked two boxes regarding what family member will occupy the unit, the landlord or the landlord's spouse and the child of the landlord or landlord's spouse
- Next to the above checked boxes the landlord wrote in the margins "landlord moving in- daughter may also move in"

The landlord testified that approximately one year ago her sister was diagnosed with leukemia. The landlord entered into evidence medical documentation of her sister's illness. The landlord testified that in July of 2022 she moved to the subject rental city to take care of her sister and to donate her bone marrow to her sister. The landlord testified that when she initially moved to the area she moved in with her daughter, but this was only a temporary solution as her daughter's apartment is only a one bedroom.

The landlord's daughter testified that while her mother lived with her, they had to share a bed and this was not ideal.

The landlord testified that she donated her bone marrow to her sister in November of 2022 and stayed with her daughter during and after that time as she became quite sick from the procedure and needed her daughter's care.

The landlord testified that the basement tenancy with tenant KC ended by way of mutual agreement on October 31, 2022. The Mutual Agreement to End Tenancy (the "Mutual Agreement") stating same was entered into evidence. The landlord testified that at the time the tenancy with KC ended she was not able to move into the basement suite because of her upcoming bone marrow transplant procedure. The landlord testified that in any event she did not want to live in the basement and wants to live in the upper suite which is larger.

The daughter testified that prior to entering into the Mutual Agreement with tenant KC, tenant KC was served with a letter informing the tenant KC of the landlord's intent to renovate the subject rental property and asking the tenant to move. The above letter was entered into evidence. The landlord's daughter testified that after discussing their plans with tenant KC they agreed to end the tenancy mutually and to provide tenant KC with one month's free rent.

The landlord testified that when she had recovered from the bone marrow transplant procedure, her daughter served the tenant with the Notice so that she could move into her home. The landlord testified that she moved out of her daughter's apartment because it was not big enough for both of them and that she is currently renting a room at another location. The landlord entered into evidence a month-to-month tenancy agreement for a room that started on April 4, 2023 with rent in the amount of \$1,000.00 due on the 4<sup>th</sup> day of every month. The landlord testified that she will move out of the rented room as soon as she gets possession of the subject rental property.

The landlord testified that her sister is terminally ill and is currently in hospital. The landlord testified that she hopes that her sister can move in with her and that she can take care of her.

On cross examination the landlord and daughter testified that:

- Rent for the subject rental property has increased most years
- The landlord has asked the tenants in the past to pay additional fees for landscaping, but the tenants declined to do so

The landlord's daughter testified that:

- The Notice states that she might move in because at the time the Notice was served they did not know if the landlord's sister would need to live close to the hospital.
- If the landlord's sister needed to live close to the hospital, then they considered having the landlord's sister move into the daughter's apartment which is close to the hospital and having the daughter move into the subject rental property with the landlord.

The landlord's daughter testified that:

- Since the landlord's sister is terminal, and all the doctors can do is palliative care, the landlord's sister does not need to be close to the hospital.

- If the landlord's sister is discharged, she will move into the subject rental property with the landlord.
- Regardless of what happens with the landlord's sister, the landlord intends to move into the subject rental property.

Tenant ZS testified that:

- From 2017 onwards the landlord has intimated that they have not been paying enough rent
- The landlord manufactured grounds for this eviction because they did not agree to pay more rent
- When the tenant KC moved out of the basement suite in October of 2022 the landlord told tenant KC that she was going to move into the basement suite
- The landlord has tried other techniques to get rid of them, including serving them a breach letter for restricting the landlord's entry into their private yard
- The daughter's apartment is a two-bedroom luxury apartment with amenities
- He does not believe the landlord wants to look after her sister
- The landlord is trying to evict them because they refused to pay her business costs such as landscaping costs
- The landlord served the current basement tenant (MS) with a notice to end tenancy at the end of May 2023 so that she could move downstairs
- The landlord has not been paying 10% of utilities as agreed
- The landlord has increased the rent above the permitted amount

The tenants entered into evidence a 57 minute audio recording between the landlord and the tenants from August 10, 2020 and a summary of the relevant sections. In the audio recording:

- The landlord asks the tenants to pay additional fees for pruning and the tenants declined to do so
- The landlord states that she has looked at the cost of three-bedroom units and that she gave the tenants a deal on the cost of rent
- The tenants informed the landlord of their understanding of COVID related rent increase restrictions
- Tenant JS asks the landlord what she would do if she couldn't pay her debts The landlord responds that she would have to move back here. Tenant JS tells the landlord that she would not be financially better off if she moved into the subject rental property. The landlord disagrees but says that she is not thinking of that

The tenants entered into evidence a 10 Day Notice to End Tenancy for Unpaid Rent dated May 15, 2023 (the "10 Day Notice") pertaining to the basement suite of the subject rental property. The Notice lists the landlord as the landlord and tenant MS at the tenant. In a decision dated July 17, 2023, the 10 Day Notice was upheld and the landlord was awarded an Order of Possession for unpaid rent.

The tenants entered into evidence two text messages regarding repair requests to the subject rental property dated October 15, 2016 and July 2, 2017.

The tenants entered into evidence a breach letter from the landlord to the tenants dated November 23, 2022 which states that the tenants breached the tenancy agreement by locking the backyard gate and preventing the landlord access. The letter states that the backyard is common property and that if the tenant restricts access again they will be served with a notice to end tenancy for cause. Tenant ZS testified that the tenancy agreement states that the tenants have exclusive use of the back yard. The tenants' tenancy agreement that was entered into evidence states that the tenants have exclusive use of the back garden.

The tenancy agreement addendum initialled by the parties states at section 6 and 7:

6. The tenants aware that they are paying 60% of the utilities.
7. The landlord is paying 10% of the tenants utilities as the previous agreement as good faith.

The parties did not enter into evidence any communications between the parties regarding utilities and did not provided testimony on when or if the tenants requested the landlord pay 10% in utilities prior to this dispute.

Witness KK provided testimony regarding events that occurred after the Notice was served. I find that witness KK's testimony is not relevant to this dispute and so have not included his testimony in this decision.

Witness AG testified that she rents a room to the landlord. Witness AG was able to speak and understand some English but gave conflicting testimony regarding when she met the landlord. It was evident in the hearing that the witness did not understand what was being asked. I have not included the bulk of witness AG's testimony as witness AG did not understand the questions asked of her.

Witness KC testified that:

- She resided in the basement suite at the subject rental house from January of 2022 to November of 2022
- She received a letter from the landlord dated August 31, 2022 that the landlord intended to terminate the lease effective November 1, 2022 because the house is old and requires repair of damages (renovations) of the tenancy suite
- She informed the landlord that the August 31, 2022 notice was not a legal notice to end tenancy and forwarded the landlord a Two Month Notice to End Tenancy for Landlord's Use of Property
- The landlord did not serve her with a Two Month Notice to End Tenancy for Landlord's Use of Property
- She signed an agreement other than a Two Month Notice to End Tenancy for Landlord's Use of Property with the landlord when she completed the move out condition inspection, but could not recall what she signed
- In the period between August 31, 2022 and the end of October 2022, the landlord verbally talked to her about her family moving into the basement suite after it was renovated

The agent testified that KC signed a Mutual Agreement to End Tenancy. The Mutual Agreement to End Tenancy was entered into evidence and is signed by witness KC and the landlord. The agent submitted that the landlord did not evict the tenant for landlord's use of property and reached a Mutual Agreement to End Tenancy with the tenant because the subject rental property was in need of substantial repair. The landlord's daughter testified that the landlord spent \$20,000.00 on the renovation. The landlord's daughter testified that at the time witness KC was asked to leave, the landlord was in no condition to move into the subject rental property and the Mutual Agreement to End Tenancy had nothing to do with her aunt or other family moving in and everything to do with needed renovations.

The landlord's daughter testified that her mother was not healthy enough to move into the newly renovated unit in November or December 2022 as she was recovering from the bone marrow transplant and could not take care of herself. The landlord's daughter testified that tenant MS moved into the basement suite in December of 2022 and is still in the basement suite but has not paid rent for May, June or July 2023. The landlord's daughter testified that they had a RTB hearing regarding this issue a few days ago but have not yet received the outcome.

The landlord's daughter testified that her mother hopes that her sister will be released from hospital and will be able to live with her for what little time she has left. The landlord's daughter testified that the medicine that her aunt is taking makes it unsafe for her mother and aunt to share a bathroom. The landlord's daughter testified that the basement suite only has one bathroom and the upper suite has two bathrooms.

Landlord JS testified that the landlord told KC that she needed the basement suite for family but just got her out and raised the rent. Landlord JS submitted that this is a pattern of the landlord to get more rent money. Landlord JS testified that the landlord wants \$4,000.00 per month in rent from the property and does not intend to move in.

Counsel submitted that:

- The tenants have raised the allegation of lack of good faith and so the landlord bears the onus to prove otherwise
- Good faith requires an honest intention with no dishonest motive
- The landlord has multiple dishonest motives and is not acting in good faith
- The Notice has no mention of the sister and the landlord checked both the box that the landlord and the landlord's daughter would move in making it difficult to hold the landlord accountable with the reason to end tenancy stated on the Notice
- The landlord has a history of throwing a number of different reasons to get a tenant out and seeing which one sticks
- The landlord has disregarded the tenancy agreement by sending the November 22, 2023 letter to the tenants
- The landlord has failed to provide utilities as stated in the addendum
- The landlord wants to evict the tenants so that she can increase the rent which is born out by the evidence as three years ago the landlord requested the tenants pay for landscaping costs

Counsel submitted that if the tenants are not successful in this application for dispute resolution that I use my discretion under Policy Guideline 54 and extend the effective date of an Order of Possession. Counsel submitted that the tenants have paid rent in full for July 2023. Counsel submitted that his clients are elderly and tenant JS has shingles which are stress related.



## Analysis

Based on the Notice entered into evidence and the testimony of both parties, I find that the tenants received the Notice in person on February 13, 2023, in accordance with section 88 of the *Act*.

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

Residential Tenancy Policy Guideline 2A states that:

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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. 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 (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

I find that there is sufficient evidence that the landlord honestly intends to use the rental unit for herself and that her sister may also move into the rental unit with her, depending on her medical condition.

I accept the landlord's evidence that the landlord's sister is dying of leukemia. I accept the testimony of the landlord and her daughter, that the landlord moved in with her daughter after the landlord's sister was diagnosed with leukemia so that the landlord could be close to her sister during this time and to provide a bone marrow transplant.

I accept the landlord's daughter's testimony that she lives in a one bedroom plus den unit and that it was not suitable for both her and her mother to live in long term. I accept the landlord's daughter's testimony that she took care of the landlord in her home following the landlord's donation of bone marrow to her sister until the landlord recovered from that procedure. I accept the landlord and the landlord's daughter's testimony that given the tight quarters and the tenants' application to dispute the Notice, the landlord rented a room effective April 4, 2023 on a month to month basis. I accept the landlord's testimony that she will give her notice to end tenancy once she has regained possession of the subject rental property.

The tenants submitted that the landlord is not acting in good faith based on two requests for repairs dating back to 2016 and 2017. I find that these repair issues are too far removed in time to reasonably have any connection to the service of the Notice. I find the same to be true with the 2020 audio recording entered into evidence. I find that had the landlords been acting in bad faith, the Notice would have been issued shortly after the tenants declined to pay for landscaping costs or shortly after requests for repairs, not years later.

The Residential Tenancy Policy Guidelines state that if a landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case. In this case I find that the landlord has not ended a past tenancy to occupy the rental unit. The documentary evidence before me regarding the ending of tenant KC's tenancy shows that the landlord attempted to end the tenancy for renovation without serving the correct document and that the tenant advised the landlord of same and that they eventually came to a mutual agreement to end tenancy. The testimony of the parties regarding the verbal conversations is conflicting, I find that the documentary evidence supports the landlord's testimony over that of witness KC. I accept the landlord's version of events over that of witness KC as the landlord's testimony is supported by the documentary evidence and witness KC's is not.

I find that the landlord did not serve tenant MS with a notice to end tenancy so that she could move into the basement suite. Based on the July 17, 2023 decision between the landlord and tenant MS, I find that the 10 Day Notice to End Tenancy for Unpaid Rent was served on tenant MS because tenant MS did not pay rent.

I accept the landlord's testimony that she does not wish to live in a basement suite. I accept the landlord's daughter's testimony that the landlord wants to live in a unit with two bathrooms so that her sister can have her own bathroom if discharged from the hospital. I find that the basement suite is not comparable to the upper suite.

I find that in any tenancy some level of dispute between the parties are not uncommon and the existence of a dispute does not equate to bad faith. Even if the landlord did not pay paid utilities as allegedly required or has increased rent above the allowed amount

(of which I make no finding in this case as these questions are not properly before me), there has been no evidence to link these allegations to the service of the Notice. No documentary or oral testimony was presented showing the tenant either demanded the landlord to pay the allegedly outstanding utilities or return the alleged overpayment of rent and when the landlord refused the Notice was served. I find that the that these alleged issues are not connected in any way to the Notice. I find that the landlord has proved, on a balance of probabilities, that she intends, in good faith, to move into the subject rental property and that this decision was based on her sister's leukemia diagnosis and not on any other factor.

I find that the Notice clearly states that the landlord is moving in and that the landlord's daughter may also move in. I find that the landlord did not error in filing out the Notice and clearly stated her intention to move in and that also provided additional information about her daughter's potential plans. I find that the landlord was forthright on the Notice. I find that the landlord was not obligated to inform the tenants on the Notice of persons who might move into the subject rental property with her.

In regard to the November 23, 2023 letter from the landlord to the tenant about an alleged breach of the tenancy agreement, again I find that the presence of a previous dispute does not equate to an immediate finding of bad faith. Based on the testimony of the landlord, the landlord's daughter, the medical records of the landlord's sister, the landlord's current tenancy agreement, I find that the landlord donated bone marrow to her sister in November of 2022 and was ill after that for a period of several months and served the Notice when she was well enough to live on her own. I find that the landlord was not well enough to move into the basement unit when it was ready in December of 2022.

I find that the Notice was served because the landlord's sister is dying of leukemia and the landlord wants to live in the unit and hopefully have her sister move in with her. I find that the landlord was acting in good faith and that the landlord did not have ulterior motives in ending this tenancy. I find that this tenancy was not ended due to any previous issues between the parties but because of the landlord's sister's medical diagnosis and the landlord's attempts to support her sister. I therefore uphold the Notice and find that the landlord is entitled to an Order of Possession under section 55 of the *Act*.

Residential Tenancy Policy Guideline 54 states:

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received<sup>1</sup>. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.

I take into consideration that this was a tenancy of long duration and that rent for the month of July 2023 has been paid. The landlord testified that she is in a month-to-month tenancy agreement. As such, if the landlord were to give notice to end her tenancy today, the notice would not be effective until September 3, 2023 as one clear month's notice must be provided to end a month to month tenancy. Taking into consideration all of the above, I award the landlord an Order of Possession effective at 1:00 p.m. on August 31, 2023.

As the landlord was successful in this application for dispute resolution I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenants' security deposit.

As the tenants were not successful in their application for dispute resolution I find that they are not entitled to recover their filing fee, under section 72 of the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on August 31, 2023** which should be served on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is entitled to recover the \$100.00 filing fee from the tenants' security deposit.

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: July 18, 2023

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Residential Tenancy Branch