



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding INFINITY FORTUNE ENTERPRISES  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing, via telephone conference call, was held on August 17, 2023. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- Cancel the Landlord's 2-Month Notice to End Tenancy for Landlord's Use of Property (the 2-Month Notice).

The Landlord (agent of) was present at the hearing with her legal counsel. The Tenants were present at the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's Notice of Hearing and first documentary evidence package.

I find the Tenants first package was sufficiently served. The Tenants also submitted a second evidence package only 7 days before the hearing. The Tenants stated they submitted it in response to the Landlord's evidence and submissions they received a few days prior. The Landlord took issue with this evidence, since it is late and could have easily been presented along with their first package, and it is not new and relevant.

Residential Tenancy Branch Rule of Procedure 3.14 and 3.15 requires that the applicant's evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondents not less than 14 days before the hearing. Further,

according to Rule 3.15, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. Residential Tenancy Branch Rule of Procedure 3.17 states:

**3.17 Consideration of new and relevant evidence**

*Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.*

In this case, I am not satisfied that the evidence is new and relevant, since the Tenants, with reasonable planning and preparation, could have submitted this evidence (photos) much sooner. It is unclear why the Tenants could not have taken and submitted the photos with their initial application package, since the photos are not of anything new, and were to document issues that existed at the time they filed their application. I find this second package is not admissible.

The Tenants confirmed receipt of the Landlord's evidence and no service issues were raised.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

Background, Evidence and Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Tenants received the Notice on April 18, 2023.

The 2 Month Notice indicates that the Landlord selected two different grounds as a basis for ending the tenancy:

1) *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 Father or Mother of the Landlord or Landlord's Spouse*

And,

2) The Landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

I note the 2 Month Notice issued by the Landlord has a bold heading at the top of the second page which states the following:

**Reason for this Two Month's Notice to End Tenancy (check the box that applies)**

Rather than select the “box” that applies, the Landlord selected multiple boxes. The form does not state that the Landlord should select all boxes that they believe apply, rather, it clearly indicates to pick one box and to select a “reason”, not “reasons”. The grounds on the 2 Month Notice are reflective of what is contained in section 49 of the Act, and all are distinct sections of the Act, with distinct and corresponding grounds on the Notice. When the Landlord selects a ground, and issues the 2 Month Notice under that ground, it creates obligations for the Landlord that must be followed through with, and it is also important because it allows the Tenants to understand why the notice was issued, so that they can properly and fairly respond to it.

In this case, I note the Tenants specifically noted in the hearing that they are confused as to who the owner is, who is the “Landlord”, and who is the agent of the Landlord. The Tenants pointed out that the “Landlord” was noted as a corporation on the Notice of Rent Increase forms provided into evidence, yet on the 2 Month Notice, the Landlord was identified as an individual, named LLL, on the upper part of the form, then near the bottom, the Landlord was identified as both a company and LLL. The Tenants stated that LLL has said to them at different times that she is the agent for the Landlord, and also that she is the owner. The Tenants found the lack of clarity confusing, especially

given how she has identified herself over the years, and how the Landlord was identified on the 2 Month Notice.

The Landlord stated that the Tenants were aware of who the owner of the house was, since they were made aware of who bought the house at the time it sold a couple years ago. The Landlord also stated that she tried to explain to the Tenants at one point that she is the owner of the house and she is responsible for making repairs etc.

Having considered this matter further, I note I am entitled to amend a Notice to End Tenancy under section 68 of the Act if I am satisfied the person receiving the notice knew or should have known the omitted information and it is reasonable to amend the notice. In this case, I find there is a lack of clarity with respect to how the Landlord filled out the 2 Month Notice, and who was identified as the "Landlord". At this point, after looking at all the evidence, and hearing the testimony, I am satisfied the house is owned by the numbered company. However, I do not find this is clear based on what is contained in the 2 Month Notice.

Further, I also note the Landlord selected two different grounds on the 2 Month Notice, where only one was supposed to be selected. I find it likely that this could have contributed to a lack of clarity as to who the Landlord was at a critical time, when the Tenants were faced with the decision as to whether they were going to file a dispute of the Notice. I find the Landlord failed to comply with section 52 of the Act, by selecting more than one ground on the 2 Month Notice, and I decline to amend the notice as I do not find it is reasonable to amend in this case given the lack of clarity about who the Landlord/owner was. I find this could have prejudiced the Tenants and their ability to understand and respond to the 2 Month Notice, and this was echoed by the Tenants in the hearing.

In light of the above, I grant the Tenants' request that I cancel the Notice. Accordingly, the tenancy continues at this time and until such time it legally ends.

It is important to note that I have made no finding as to whether the landlord has a basis under the Act for ending the tenancy. The landlord remains at liberty to re-issue a Notice to End Tenancy and do so in compliance with section 52 of the Act, should the landlord decide to pursue eviction. I encourage the parties to attempt to resolve matters on their own, by mutual consent, if possible to avoid future proceedings.

As the Tenants were substantially successful with the application, I grant the the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Notice issued on April 15, 2023 has been cancelled and the tenancy continues at this time.

The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

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: August 18, 2023

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Residential Tenancy Branch