



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask us for the following orders against the landlords.

1. Cancellation (*per file*) of a Two-month Notice to End Tenancy, issued on or about 12 September 2023 [the 'Notice'].
2. Cancellation (*per file*) of the same Notice [the 'Redundant Dispute'].
3. Reimbursement for the \$100.00 filing fee for this latter application.

Both parties participated in the hearing of this application.

This hearing was conducted *via* teleconference: we heard only the voices of those who participated in this hearing. The parties' oral statements to us in this hearing were made neither under oath nor affirmation: we exercised our discretion under section 74 of the Act to not administer any oaths as part of this relatively informal and expeditious teleconference.

Note that we refer to the participants in this dispute in the plural form, even though a party may be an individual. We do this in adoption of the BC Public Service Agency's guidelines, 'Words Matter: Guidelines on Using Inclusive Language in the Workplace' [updated 18 May 2018].

### Issue(s) to be Decided

During this hearing, the tenants clarified that they mistakenly applied to resolve their Redundant Dispute, and consented to us dismissing that application, which we do so without leave to re-apply.

This leaves us with the following issues to determine:

1. Did the landlords issue this Notice in good faith?
2. Should the landlords reimburse the tenants for the cost of filing their application?

### Background and Evidence

The landlords told us the following about their decision to issue this Notice:

1. they suffer from significant health issues, which have worsened since a fall they had in August;
2. their present residence is too small for themselves and their spouse (who is succumbing to dementia) to continue living there along with the care aids that they believe they will need to hire in order to care for their worsening health;
3. they do not want to rent out this unit to different tenants: they want to live there themselves, and have extended family also come to stay with them so as to assist in their care; and
4. they contacted the tenants to inform them of their plan to move into the unit, and the tenants replied, 'Absolutely not. I will sue you.'

As a result, the landlords issued the Notice. In drafting the Notice on or about 12 September, the landlords:

1. used the form approved by the RTB;
2. signed and dated the Notice;
3. recorded the address of the rental unit;
4. recorded the effective date of the Notice as 30 November 2023; and
5. stated the basis for the Notice as occupancy by the landlords or their spouse.

For their part, the tenants told us that:

1. they cannot afford to find somewhere else to live;
2. they have a family of five, and their spouse does not work; and
3. they made renovations to the unit at their own expense with the understanding that they would be able to live in this unit for the foreseeable future.

They also doubt that the health concerns of which the landlords complain are as serious as they make them out to be. They point out that in the summer they observed the landlords driving an automobile, and tell us that if the landlords' health was so poor, then they could not have driven.

### Analysis

We have considered all the statements made by the parties and the documents to which they referred us during this hearing. And we have considered all the arguments made by the parties.

In writing this decision, we are mindful of the nature and volume of other applications to the RTB for access to limited hearing time. Parties are given an opportunity to participate in a focused and time-limited hearing, and the Director must carefully allocate resources in hearing disputes and writing decisions. As a result of the above, we will provide below only minimal reasons for our decision, sufficient to understand our reasoning.

#### *Did the landlords issue this Notice in good faith?*

Section 49 (3) of the *Residential Tenancy Act* [the 'Act'] stipulates 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.

The tenants argue (in effect) that the landlords do not intend, in good faith, to occupy this rental unit. They base this on the assertion that the landlords' health isn't all that bad. After all, the tenants saw them drive a car about a month before they issued the Notice...

The landlords respond that if the tenants saw them driving a car in the summer, then this would've had to have been before they suffered their fall in August.

We accept this as externally consistent with the tenants' observations: they may very well have seen the landlords driving in the summer, but this is consistent with the

landlords noting that they did not suffer their decline in health until after they fell in August.

When we weigh the landlords' explanation of their motivation behind issuing the Notice with common sense, we accept that their plan to move into the unit (which is apparently a larger residence) so as to accommodate live-in care-aids and extended family, makes sense. The landlords were forthcoming in their reasons for issuing the Notice.

As a result of weighing their statements in support of their Notice, we accept that they probably intend to move into the unit, as stated in their Notice. And so we also accept that they issued this notice in good faith: we see no indication of any ulterior motive in issuing the Notice.

Though this is an application by the tenants to cancel the Notice, section 55 (1) of the Act still requires us to grant an order of possession if the Notice is effective.

And section 52 of the Act tells us that for a notice to end tenancy to be effective: a landlord must sign it and date it;

1. it must give the address of the rental unit, and state the effective date of the notice;
2. it must also state the grounds for ending the tenancy; and
3. it must be in an RTB form.

Based on the uncontroverted evidence at this hearing, we find the Notice is an effective one, and should be upheld. Accordingly, we are required to grant an order of possession.

The tenants argued that in the event that the Notice is upheld, one year before the tenancy ends would be a reasonable time period in which they could find alternate living accommodations. They argue this because they have a family of five, with a spouse who does not work, and they have lived in the unit for two years.

The landlords argue that a reasonable period by which to end this tenancy would be sometime in the spring.

We reject that one year is reasonable: this is well-beyond the time frame contemplated by the Notice itself (which is two months). We accept the position of the landlords, and order that the tenancy shall end on 31 March 2024.

*Should the landlords reimburse the tenants for the cost of filing their application?*

As the tenants did not succeed in their application, we do not find it reasonable that the landlords should reimburse them for the cost of the application.

### Conclusion

We make an Order of Possession in favour of the landlords. This order is effective at 1 p.m. on 31 March 2024, and the landlords must serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with our order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

This decision is made on authority delegated to us by the Director of the RTB under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: 16 January 2024

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Residential Tenancy Branch