



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, FFT / CNC, FFT

### Introduction

The hearing was convened following two applications for dispute resolution (Applications) made by the Tenants under the *Residential Tenancy Act* (the Act), which were joined to be heard simultaneously. In their Applications the Tenants request the following:

- An order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) under section 49(8)(a) of the Act;
- An order cancelling a One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47(4) of the Act; and
- To recover the cost of the filing fees for both Applications under section 72 of the Act.

All three Applicant Tenants attended the hearing. The Respondent Landlord, an agent for the owner of the rental unit, also attended the hearing.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and the other's evidence. Based on their testimonies I find that each party was served with these Materials and evidence as required under sections 88 and 89 of the Act.

### Preliminary Issue – Withdrawal of the One Month Notice

At the outset of the hearing the Landlord indicated to me they wished to withdraw the One Month Notice as it had been served to the Tenants in error and the issues raised on the One Month Notice had already been decided upon at a previous hearing. The Tenants testified they consented for the One Month Notice to be withdrawn.

As set out in Policy Guideline 11 - Amendment and Withdrawal of a Notice to End Tenancy, a landlord or tenant can not unilaterally withdraw a Notice to End Tenancy. However, a Notice to End Tenancy may be waived with the express or implied consent of the landlord or tenant.

Given that the Landlord expressed their wishes for the One Month Notice to be withdrawn and the Tenants agreed to this, I find there is express consent from both parties for the One Month Notice to be withdrawn.

Therefore, I order the One Month Notice to End Tenancy for Cause dated November 14, 2023 cancelled and of no force or effect. Under section 64(3)(c) of the Act I amend the Tenants' Application to withdraw their claim disputing the One Month Notice since this issue is now moot.

#### Issues to be Decided

Should the Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to recover the cost of the filing fees for their Applications from the Landlord?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on June 1, 2017. The tenancy was then renewed on October 1, 2020 for a fixed term ending August 1, 2021 and continuing on a month-to-month basis thereafter.
- Rent is currently \$2,692.00 per month due on the first day of the month.
- A security deposit of \$1,700.00 and a pet damage deposit of \$300.00 was paid by the Tenants which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenants still occupy the rental unit.

A copy of the Two Month Notice was entered into evidence. The Two Month Notice is signed and dated July 11, 2023 and provides an effective date of January 8, 2024. The reason for ending the tenancy, per the Two Month Notice is the rental unit will be occupied by the landlord or the landlord's spouse.

The Landlord confirmed there was a typographical error on the Two Month Notice and it had been signed and dated at the same time as the letter accompanying the notice dated November 6, 2023. I amend the date of the Two Month Notice to November 6, 2023 accordingly.

Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read January 31, 2024 instead of January 8, 2024 as the effective date should be the day in the month before rent is due, per section 49(2)(a) of the Act.

The Landlord testified as follows. The owner wants to move into the rental unit to use it themselves. They are coming to Canada from Hong Kong and need to use their property. I was referred to a copy of an airline booking reference entered into evidence by the Landlord which appears to show details of a flight leaving Hong Kong International Airport and arriving in Vancouver International Airport on March 24, 2024.

The Tenants testified as follows. The Landlord took over as an Agent for the owner in 2023 and prior to this, the Tenants and the owner had a good relationship. The Tenants stated that since 2023 they have been inundated with 25 notices from the Landlord and had to make an application for dispute resolution to the Residential Tenancy Branch (the Branch) to protect their quiet enjoyment. I was referred to a copy of a previous decision from the Branch. The file number for the Tenants' previous application is included on the front page of this Decision for reference.

The Tenants stated they do not believe the owner is moving from Hong Kong as, per the Notice of Rent Increase entered into evidence by the Tenants, the owner resides in Edmonton. The Tenants also argued the owner had been on site at the rental unit moments after a leak was reported, so they do not think they live in Hong Kong.

In response to the Tenants' testimony, the Landlord reiterated the owner wants to use the rental unit for themselves and they thought the One Month Notice would be enough to evict the Tenants without having to compensate them with a month's rent. The owner's daughter, who owns the rental unit jointly with their father, uses the garage at the rental unit for storage. When they were visiting, they noticed a rail was damaged,

they asked the Tenants to fix it, which they did not do and a previous One Month Notice to End Tenancy for Cause was issued.

The Landlord stated that as the previous decision of the Branch went against the Landlord, the Two Month Notice was used instead. The file number relating to the previous Notice to End Tenancy is included on the front page of this Decision.

The Landlord stated the owner wants to get the rental unit ready for their kids, and move over from Hong Kong due to the political situation there and had sold their property in Edmonton.

### Analysis

Section 49(3) of the Act allows a landlord to end a tenancy by issuing a Notice to End Tenancy if the landlord or a close family member intends, in good faith, to occupy the rental unit. Section 49(8) also allows a tenant to challenge the Notice to End Tenancy within fifteen days of receipt.

Based on the evidence before me and the testimony of both parties, I find the Two Month Notice was served to the Tenants on November 6, 2023 by attaching to the door of the rental unit and in their Application, the Tenants confirmed receipt of the Two Month Notice on November 7, 2023. The Tenants filed their Application on November 8, 2023. Given this, the Tenants have filed their Application in time to dispute the Two Month Notice.

Per Rule of Procedure 6.6, when a tenant disputes a notice to end tenancy, the onus is on the landlord to prove, on the balance of probabilities, that notice is valid. Additionally, Policy Guideline 2A - Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states the landlord must demonstrate that they, or if applicable, a close family member, plan to occupy the rental unit for at least six months and that they have no ulterior motive for issuing the notice. Policy Guideline 2A also discusses the idea of good faith and the need not to have an ulterior motive for ending the tenancy.

The Two Month Notice indicates the rental unit will be occupied by the landlord or the landlord's spouse. During the hearing the Landlord, acting as an agent for the owner, indicated the owner intended on using the rental unit for their own purposes.

Overall, I found the testimony of the Landlord to be lacking in detail, vague and unconvincing. As such, I afford it little weight. I found there was very little in the way of

particulars regarding the owner's purported plans to occupy the rental unit. The bulk of Landlord's testimony came in response to the Tenants' argument the owner resided in Edmonton. The Landlord seemed to focus mainly on the failure of ending the tenancy under a One Month Notice to End Tenancy for Cause, rather than the owner's plans to occupy the rental unit.

Though the Landlord mentioned the political situation in Hong Kong very briefly in passing, again I found details to be scant and no context was provided as to how this linked to the issuing of the Two Month Notice.

The owner did not appear at the hearing, nor did they provide any written submissions. The only piece of documentary evidence provided by the Landlord was the airline booking reference which I find shows an arrival in Canada a significant amount of time after the effective date of the Two Month Notice. I do not find this evidence particularly indicative of the owner's intentions regarding the rental unit and do not afford it significant weight.

In consideration of the above, I find the Landlord has failed to establish on a balance of probabilities the Two Month Notice was issued in good faith and that the owner or the owner's spouse intends on occupying the rental unit for at least six months.

Therefore, I grant the Tenants' Application for cancellation of the Two Month Notice under section 49 of the Act. I order the Two Month Notice to End Tenancy for Landlord's Use of Property dated November 6, 2023 cancelled and of no force or effect. The tenancy continues until it is ended in accordance with the Act.

As the Tenants have been successful in their Applications, I find they are entitled to the reimbursement of the filing fees. I order that the Tenants may make a one-time deduction of \$200.00 from a future rent payment in satisfaction of the return of the filing fees for both Applications under section 72(2)(a) of the Act.

### Conclusion

The One Month Notice is withdrawn.

The Tenants' Application for cancellation of the Two Month Notice is granted. The Tenancy continues until ended in accordance with the Act.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 14, 2024

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Residential Tenancy Branch