



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy For Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on February 1, 2023 and the tenants still reside in the rental unit. Rent in the amount of \$1,900.00 is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. A copy of the tenancy agreement has been provided for this hearing which indicates that the landlord collected a security deposit from the tenants in the amount of \$950.00 on January 3, 2022, which the landlord testified is a typing error by someone who filled it out, possibly another manager, and should read January 3, 2023. The rental unit is a basement suite of a house, and another tenant occupies the upper level. The landlord does not reside on the rental property.

The landlord further testified that on December 27 or 28, 2023 the tenants were served with a Two Month Notice to End Tenancy For Landlord's Use of Property by email, and a copy has been provided for this hearing. It is dated December 28, 2023 and contains an effective date of vacancy of February 29, 2024. The reasons for issuing it state:

- 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), specifying the child of the landlord or landlord's spouse; and
- 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.

The landlord's son will be moving into the rental unit. He was visiting at Christmas and is moving back from California. An email dated January 18, 2024 from the landlord's son has also been provided for this hearing. It states that the landlord's son will be moving back to the City in March, 2024 and the basement suite will suit him because he can walk to the recreation center to work out.

The landlord also testified that the landlord and spouse are on title, and the landlord is really the landlord or owner. The landlord and spouse are in the process of moving it into a family trust and have created a company.

**The first tenant** (DW) testified that on September 2, 2023 the tenants were contacted by the landlord's manager about a meeting, but wouldn't indicate why. On October 4, 2023 the tenant went to the manager's office who said there were complaints by the next door neighbour, not on the property, about a light illuminating the tenants' walkway, and about slamming the gate, which is not true. The tenants told the landlord's manager that it was not true, but he didn't seem to care. The tenant advised that if the light is an issue, the landlord could change it or remove it, but the manager didn't care about that either.

The complaints also included smoking in the yard, which the tenants have not, and slamming the door, also not true. A noise complaint had been made from the tenant in the upper level at the beginning of the tenancy, and the tenants have made every effort to be quiet and there have been no complaints since.

At the end of the meeting, the landlord said that the tenants' life style didn't jive with the neighbours and asked that the tenants move out at the end of 2023, and if they did not, the landlord would begin eviction proceedings.

In late November, 2023 the tenants sent a letter to the landlord by mail explaining that his reasoning was unreasonable, and neighbours are outside of the Act, and that the

tenants had made every reasonable effort to respect the upstairs neighbour. The tenants did not agree to end the tenancy. Then in December, 2023 the tenants received the Two Month Notice to End Tenancy For Landlord's Use of Property. After threatening to evict at the end of 2023, and now his son needs to live in the rental unit is bad faith; it does not pass the smell test, is an act of convenience, and not in good faith.

**The second tenant** (JW) testified that reiterating what the first tenant testified, it's convenient for the landlord, and not in good faith. The basement suite has 2 bedrooms.

#### SUBMISSIONS OF THE LANDLORD:

None

#### SUBMISSIONS OF THE TENANTS:

The Two Month Notice to End Tenancy For Landlord's Use of Property was signed on the 28<sup>th</sup>, but was served by email on the 27<sup>th</sup>.

#### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. Also, in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice. In this case, good faith intent is in dispute.

I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. The law also states that incorrect effective dates in a Notice are changed to the nearest date that complies with the law. There is no such provision for incorrect dates signed by the landlord. In this case, it appears that the Notice was served before it was signed, which makes no sense in my opinion.

More importantly, I accept the undisputed testimony of the tenants that the landlord has attempted to end the tenancy previously, first by mutual agreement, which was not successful, and then by a meeting request from the landlord's manager. It is clear to me that the landlord wants the tenancy to end, but could not do so with a One Month Notice to End Tenancy For Cause because the allegations of a light illuminating or slamming a gate or door is not serious enough to warrant ending a tenancy.

The only evidence provided by the landlord is an email from the landlord's son indicating that the basement suite would suit him, however anyone can get their son or daughter to send an email stating whatever the party wishes them to state.

In the evidence and the circumstances, I am not satisfied that the Notice was given in good faith. Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

Since the tenants have been successful with the application, the tenants are entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in that amount in favour of the tenants as against the landlord, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may serve the order upon the landlord and file it in the Provincial Court of British Columbia, Small Claims division for enforcement as an order of that Court.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy For Landlord's Use of Property dated December 28, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants are permitted to reduce rent for a future month by that amount, or may otherwise recover it.

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: February 01, 2024

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Residential Tenancy Branch