



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNL, DRI, OLC  
                             CNL  
                             CNL

### Introduction

This hearing was scheduled to convene on May 27, 2024 at 9:30 a.m. by way of conference call concerning 2 applications made by the tenants which have been joined to be heard together. The first application seeks an order cancelling a notice to end the tenancy for landlord's use of property; disputing a rent increase; and seeking an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement. The second application seeks an order cancelling a notice to end the tenancy for landlord's use of property.

All of the named tenants and the landlord attended the hearing. The tenants were assisted by an Advocate, and the landlord was accompanied by the landlord's spouse. The tenants also arranged for an Interpreter, who was affirmed to well and truly interpret the hearing from the English language to the tenants' Native language, and from the tenants' Native language to the English language to the best of the Interpreter's skill and ability. The landlord gave affirmed testimony, and the tenants' Advocate was given the opportunity to question the landlord.

The hearing did not conclude within the time scheduled, and I adjourned the hearing to July 3, 2024 at 9:30 a.m. to continue. My Interim Decision was provided to the parties after the first scheduled date.

On June 12, 2024 the tenants filed another application seeking another order cancelling a notice to end the tenancy for landlord's use of property, which was also joined to be heard with the 2 previous applications.

On July 3, 2024 the landlord and the landlord's spouse, all tenants and the tenants' Advocate attended, with another interpreter who was affirmed to well and truly interpret the hearing from the English language to the tenants' Native language, and from the

tenants' Native language to the English language to the best of the Interpreter's skill and ability.

At the commencement of the first day of the hearing, the tenants asked that the application disputing a rent increase be dismissed with leave to reapply. The landlord did not oppose that, and I therefore dismiss that portion of the application, with leave to reapply.

I also questioned the parties with respect to exchanging evidence, and I learned that the tenants have received the landlord's evidence, and the tenants' Advocate sent evidence to the landlord on May 6, 2024, as well as a few more pages and a USB stick on May 7, 2024, but as of May 27, 2024 the registered mail was not retrieved by the landlord. The tenants' Advocate provided a tracking number, and I am satisfied that the landlord has been served with the tenants' evidentiary material. I also learned that the landlord didn't serve the confirmation of serving evidence movies to the tenants. Therefore I decline to consider it. All other evidence has been reviewed, and the evidence I find relevant to the applications is considered in this Decision.

The landlord's spouse and one of the named tenants gave affirmed testimony on the 2<sup>nd</sup> day of the hearing, and the parties were given an opportunity to question each other and to give submissions.

#### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the Two Month Notice to End Tenancy For Landlord's Use of Property dated March 27, 2024 was issued in accordance with the *Residential Tenancy Act*, and in good faith?
- Has the landlord established that the Two Month Notice to End Tenancy For Landlord's Use of Property dated May 29, 2024 was issued in accordance with the *Act*, and in good faith?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to giving notices to end the tenancy and rent increases?

#### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on September 1, 2014 and reverted to a month-to-month tenancy after August 31, 2017, and the tenants still reside

in the rental unit. Rent in the amount of \$1,400.00 was payable on the 1<sup>st</sup> day of each month, which has been increased over time and is currently \$1,850.00 per month, and there are no rental arrears. On August 15, 2014 the landlord collected a security deposit from the tenants in the amount of \$675.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides in the upper level of the home with his wife and 2 children, aged 12 and 6.

The landlord further testified that on March 27, 2024 the landlord served the tenants with a Two Month Notice to End Tenancy For Landlord's Use of Property by handing a copy in person to the adult tenants. A copy of page 1 only of the 4-page Notice has been provided by the landlord for this hearing. A copy of all 4 pages has been provided by the tenants. It is dated March 27, 2024 and contains an effective date of vacancy of May 31, 2024. The reason for issuing it states: 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 landlord or the landlord's spouse.

The landlord needs the rental unit for clients to meet with the landlord, who is self-employed, in order to keep work separate from home, and for the landlord's father-in-law, who is 87 years old, to look after the landlord's children. The landlord's father-in-law will stay in the basement in the back side. The rental unit will be used for the landlord's business.

The landlord had served the tenants with a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit dated December 1, 2022 with an effective date of vacancy of March 31, 2023, stating "Close family coming." That was intended to be for the landlord's mother-in-law, however she passed away in March, 2023 so the landlord agreed to cancel that Notice. The tenants said they were going to move out at the end of March, 2024, but then asked to extend it until the end of April, 2024, and the landlord agreed.

The landlord owns 3 properties with the landlord's spouse, one of which they reside in and where the tenants reside. Another is a 5 bedroom, 5 bathroom home, as well as another in a neighbouring community.

The landlord gave a notice to end the tenancy in December, 2022 for the landlord's mother-in-law and father-in-law to move into, but in 2023 the landlord's mother-in-law passed away, so the end of the tenancy was postponed until the end of March, 2024. The tenants said that BC Housing would help, but they would still move out. Then the tenant said she couldn't move out at the end of March, but at the end of April, 2024.

The tenants told the landlord that they could pay more rent, but the landlord replied that he didn't need the money.

**The landlord's spouse** testified that the tenants were served with a Four Month Notice to End Tenancy For Demolition or Conversion of a Rental Unit in December, 2022 because the parents of the landlord's spouse were elderly and the landlord's spouse wanted them to live in the landlord's property. The landlords were being kind to the tenants so that would be enough time for them to find a place. The landlords crossed out the reasons for ending the tenant and wrote, "Family moving in." The tenants didn't dispute it, and the tenant told the landlords they would find a place and move out, which was supposed to happen at the end of March, 2023. Only 2 pages of the Notice were served to the tenants.

On March 3, 2023 the mother of the landlord's spouse passed away and a few days later the landlord's spouse received a call from the tenant saying that the tenants didn't find a place. The landlord's spouse agreed to extend the effective date of vacancy , and the tenants were to find a place as soon as possible, but didn't cancel the Notice to end the tenancy. The tenants said they were looking with BC Housing.

The parents of the landlord's spouse were very close, and the landlord's spouse told her father, who is age 87 with a moving disorder, that he could not live alone. The landlords have 2 kids, and she has to take them to school and activities, as well as go to see her father daily, and works full time at a grocery store. His current home is close, but the landlord's spouse can't keep going there. The landlord's spouse also wants her father to spend time with the children, and does not want to lose the opportunity.

The landlord is a driving instructor. The rental unit has 3 bedrooms. The other home is also rented. The rental unit basement suite rents for \$1,800.00 per month, and another for \$2,050.00, and another for \$2,400.00.

**The tenants' daughter** testified for the tenants, that since September, 2014 to March, 2024 the tenants always paid rent in cash. Up until April, 2024 no receipts were issued except once per year for BC Housing Rental Assistance Program. The tenants have never been served with a Notice of Rent Increase and have never agreed in writing to any rent increases. The landlord would tell the tenants a month or 2 in advance when rent was paid that it was increasing.

The tenants made an application to BC Housing, for rental assistance in April, 2023. The tenants had to re-apply in 2024, filling out the form as usual and needed a rent receipt. The landlord disagreed and said that the tenants had to move out. The landlord said that the tenants had to move out due to a wedding, family coming and that

a brother was moving in. The tenants did not know that the landlord was required to give receipts. The tenants also did not know about rent increases until one of the tenants went to the MLA about the rent increases, who said that was illegal. They helped the tenants to write a letter, and it was given to the landlord's wife on March 26, 2024. The landlord called at night, angry and wouldn't let the tenant talk. The landlord was aggressive, but said that the tenants gave extra money to the landlord on purpose, then on March 27, 2024 the landlord gave the tenants the notice to end the tenancy.

The MLAs office helped the tenants provide another letter to the landlord asking for rent receipts from September, 2014 to March, 2024, which was posted to the landlord's door on March 28, 2024. The landlord did not provide the receipts, saying he had to talk to the Residential Tenancy Branch and his lawyer. A week later the landlord gave the tenants 3 receipts from past years. When the tenants paid rent on April 2, 2024, the landlord gave a receipt for March, 2024 saying it was an overpayment of rent and gave the tenants a cheque for \$450.00, which has not yet been deposited.

The tenants have always put rent in the landlord's mailbox if they were not available, from May, 2023 to March, 2024. As of April, 2024 the tenants paid \$1,850.00 by cheque. The landlord's wife said they were very busy people, and were never home.

The landlord had previously requested the tenants to move out by giving a Four Month's notice to end the tenancy, but did not give all 4 pages of the form. The landlord said he would accept \$2,500.00 for rent, but one of the tenants said that was too much, and would pay \$2,300.00. First the landlord said the tenants had to move out due to a wedding, then that his brother was moving in, then that the mother was moving in, and now the father-in-law.

The landlord testified that he increased the rent because the tenants wanted the landlord to replace the floors, but the tenant testified they are a family of 5, and the landlord wanted to do renovations. The family went away except for the father, who told the landlord that he could do the renovations, and took out the flooring and made a half bathroom with a sink and a toilet.

Rent in 2014 was \$1,400.00 per month, but the tenants never got 3 months notice to increase the rent, nor did the tenants have an agreement. It wasn't until the tenants talked to the MLA that they became aware that such increases were not allowed, which the landlord has done throughout the years. The tenants applied to BC Housing knowing that rent could be increased, but did not know the permitted percentage. The landlord told the tenant father 1 or 3 months before the increase the amount that had to be paid, and the tenants never requested renovations.

#### SUBMISSIONS OF THE TENANTS' ADVOCATE:

The landlord has not met the burden of proving good faith, and events preceding the Two Month Notice to End Tenancy For Landlord's Use of Property is an ulterior motive which undermines good faith. The landlord gave an improper notice to end the tenancy in 2022 for renovations or conversion, or to demolish, which were scratched out. The landlord provided different explanations about why, such as a wedding, family, brother coming to visit and parents moving in. However, the tenant testified that subsequent to that Four Month's Notice the landlord agreed after asking for \$2,500.00 to continue the tenancy. The tenants agreed to \$2,300.00 which they continued to pay. The landlord told the tenants that they had to move out when they asked for a receipt, and refused to provide the receipt. Once the tenants went to the MLA, the landlord gave a new notice to end the tenancy, but gave several explanations. The landlord's wife testified that her father has movement difficulty, which would make it difficult for him to go upstairs early in the morning to look after children. The landlord's motive is undermined by the clear ulterior motive to get rid of tenants who have become troublesome to the landlord. The landlord also failed to serve all pages of the Four Month's Notice, which sets out information about disputing the Notice and compensation required. That notice was invalid from the beginning. When the landlord was made aware of that, he gave another notice to end the tenancy. There is also a question of whether or not the landlord's business can entail occupation under the *Residential Tenancy Act*.

#### SUBMISSIONS OF THE LANDLORD:

The landlords decided that they needed a place for parents and for the landlord's purposes. The Four Month Notice was accepted by the tenants. Then in March, the landlord's mother-in-law passed away. The tenants wanted to stay longer, and the parties decided that when the tenants found a place, they should move out. The tenants said they would move out at the end of March, 2024. On March 26<sup>th</sup> the landlord called, and the tenants said they couldn't move and wanted to stay till the end of April, 2024. At the beginning of March the tenants put \$2,300.00 in the mailbox; normally given by hand and would get a receipt. When the landlord called them, the tenant said he couldn't find a place and for more money they would stay. They asked for a receipt, then they gave notice to the landlord's wife about illegal rent increases. The landlord told them rent was raised properly, and the landlord could only give a receipt for \$1,850.00. On March 27, 2024 the landlord gave another notice to end the tenancy because the tenants said the previous one was incorrect. Every month they arrive with the form, and the landlord signed and gave a receipt to the tenants. After the first scheduled day of this hearing, the landlord noticed that he didn't tick the box indicting that his father-in-law was moving in, so gave another Notice to end the tenancy. The tenants are paying \$1,850.00 per month. The landlord needs the place

for his office and father-in-law to look after the kids. The tenants are disputing for an unnecessary reason; the issue of the landlord's brother staying was only for a vacation.

### 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*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property, the landlord must demonstrate good faith intent to accomplish the stated purpose for ending the tenancy.

I have reviewed both Two Month Notices, and I find that they are in the approved form and contain information required by the *Act*. Good faith intent is disputed.

A landlord may not end a tenancy for landlord's use of property for a landlord's business, but only for residential occupation by a landlord or close family member.

The landlord testified that after giving a Four Month's Notice to End Tenancy For Demolition or Conversion of a Rental Unit, the tenants didn't dispute it. That may very well have been because the landlord didn't provide all pages of the Notice which gives instructions about disputing it and compensation required. I accept the testimony of the landlord's spouse that 4 months notice was given to provide the tenants with more time to find a place, but that is not in accordance with the law. Whether the tenants disputed it or not, the landlord would not have been successful in obtaining an order of possession. Therefore, I find it incumbent upon me to cancel that Notice.

The first Two Month Notice is dated March 27, 2024 and states that the rental unit will be occupied by the landlord or the landlord's spouse. The second one is dated May 29, 2024 and states that the rental unit will be occupied by the landlord or the landlord's spouse and the father or mother of the landlord or landlord's spouse. I accept that the mother-in-law of the landlord's spouse passed away on March 3, 2023.

I also consider the testimony of the tenant that the day after the tenants gave a letter to the landlord, which was written with the assistance of the MLA, the landlord gave the second Two Month Notice to end the tenancy.

I also consider the testimony of the landlord's spouse who testified that her dad has movement difficulty, and I agree with the tenants' Advocate that looking after the children going upstairs to do so would be considerably difficult.

The landlord testified that his brother was only going to be there for a vacation, which is not a valid reason for ending a tenancy.

In the circumstances, and considering all of the evidence, I find that the landlord's motive is driven by the tenants' failure to comply with illegal rent increases.

As a result, I find that an ulterior motive exists, and I cancel both Two Month Notices to End Tenancy For Landlord's Use of Property. The tenancy continues until it has ended in accordance with the law.

I hereby order the landlord to comply with the *Act* respecting rent increases.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy For Landlord's Use of Property dated March 27, 2024 is hereby cancelled.

The Two Month Notice to End Tenancy For Landlord's Use of Property dated May 29, 2024 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

Pursuant to my authority under the legislation, the Four Month Notice to End Tenancy For Demolition or Conversion of a Rental Unit is hereby cancelled.

I hereby order the landlord to comply with the *Residential Tenancy Act* by increasing rent in accordance with the *Act* and the regulations only, unless the tenants otherwise agree in writing.

The tenants' application disputing a rent increase is hereby dismissed, with leave to reapply.

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 11, 2024

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Residential Tenancy Branch