



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were assisted by counsel.

As both parties were present service was confirmed. The parties confirmed the 2 Month Notice dated October 31, 2019 was served on the tenants by November 1, 2019. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee from the landlords?

### Background and Evidence

This periodic tenancy began in August 2018. The rental unit is the upstairs suite of a detached home. The basement suite is occupied by another individual. The monthly rent was originally \$1,700.00 at the start of the tenancy.

The landlord issued a 2 Month Notice dated October 31, 2019 on the tenants on November 1, 2019. The reason provided on the notice for the tenancy to end is that all of the conditions for sale of the rental unit have been satisfied, and the purchaser has asked the landlord, in writing, to give this Notice as the purchaser or a close family member intends in good faith to occupy the rental unit. The landlord submitted into documentary evidence the contract of purchase and sale for the property and the written request from the purchaser.

The parties gave evidence that the landlord had listed the property for sale and there have been earlier showings to other prospective buyers. The tenants said that they were aware of the landlords earlier efforts.

The landlords called the purchaser as a witness. The purchaser testified that they purchased the property as they intend to occupy it as their primary residence. The purchaser explained that the rental property is geographically closer to their place of employment and that there is sufficient space for their family of three.

The tenants gave evidence that the landlords conducted themselves as if the tenancy was ongoing until the 2 Month Notice was issued. The tenants question the good faith nature of the property purchase as they suspect that the landlord and purchaser had a pre-existing relationship. The tenants also gave lengthy testimony regarding infractions of the municipal bylaws by the landlord and their suspicions about the resident of the basement suite of the property.

### Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the case at hand the landlords must show on a balance of probabilities, which is to say it is more likely than not, that the landlords intend in good faith to sell their property and that all of the conditions for sale have been satisfied. The landlords must also show

that the purchaser has requested in writing, that the landlords issue a Notice to End Tenancy because the purchaser intends in good faith to occupy the rental unit.

The tenants question the intention of the landlords and raises a good faith argument about the landlords' plans.

Residential Tenancy Branch Policy Guideline 2 suggests that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

Policy Guideline 2 reads in part as follows:

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

Much of the tenants' submissions focused on municipal bylaw infractions which I find to be irrelevant to the matter at hand. I similarly find that the tenants failed to demonstrate why their conjecture about the resident of the basement suite of the property has any relevance to the issuance of the Notice to End Tenancy.

Furthermore, I find the tenant's submission that the purchaser and the landlord were acquainted prior to the sale of property to be insufficient to demonstrate an absence of good faith. I find it both probable and reasonable that one may be made aware of a property for sale or be connected to a purchaser through one's circle of acquaintances. I do not find that simply because the purchaser and landlord were acquainted prior to entering a contract of purchase and sale to be evidence that there are ulterior motives or a lack of bona fide intent.

I find that the landlords have provided sufficient evidence to support the issuance of the 2 Month Notice. The landlords have provided the contract of purchase and sale of the rental property and written request from the purchaser that a Notice to End Tenancy be issued. I accept the landlord's position that all of the subjects for the sale of the property have been removed. I further accept that the landlords have been provided with a written request from the purchaser that they issue the 2 Month Notice as the purchasers intend to occupy the rental unit. I find that the written evidence submitted in conjunction with the testimonies of the landlords demonstrates the landlord's good faith intention. The landlord provided documentary evidence that a deposit has already been paid for this property purchase. I find the purchaser's explanation that they intend to occupy the rental unit as it is closer to work and provides sufficient space for their family to be reasonable, cogent and in accordance with the documentary evidence. I find that on a balance of probabilities I am satisfied the landlords will use the rental unit for the purpose expressed.

Therefore, I find on a balance of probabilities that all of the conditions for the sale of the rental property has been satisfied, and the purchaser has requested the landlords issue a Notice to End Tenancy because the purchaser intends to occupy the rental unit. I dismiss the tenants' application to cancel the landlords' 2 Month Notice.

Section 55(1) of the *Act* reads in part as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52..., and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice...*

As I have dismissed the tenants' application and I am satisfied that the landlord's 2 Month Notice complies with the form and content requirements of section 52 of the *Act*, I issue a formal Order of Possession in the landlord's favour pursuant to section 55. As the 2 Month Notice was served on the tenants on November 1, 2019, the effective date of the 2 Month Notice is automatically corrected to January 31, 2020. Accordingly, I issue an Order of Possession effective on that date.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **12:00pm on January 31, 2020**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 30, 2019

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Residential Tenancy Branch