



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

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

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice);
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and evidence submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

### **Preliminary Issue – Scope of Application**

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee for this application?

### Background & Evidence

The rental unit is a one or two bedroom suite in a portion of the landlord's home. The tenancy began January 25, 2018 and the current rent is \$1436.00 per month.

The landlord served the tenants with a Two Month Notice on July 26, 2022. The Two Month Notice has an effective date of September 30, 2022. The ground for issuing the Two Month Notice is the landlords intend to occupy the rental unit for themselves.

The landlords testified that they need additional space in the house to use as a workout area. They were members of fitness world prior to Covid-19 pandemic and since then their membership has been cancelled and they have only been going for walks. The space downstairs would be very convenient as workout space. At their old age they just need to eliminate any added stress and anxiety in their life. They are not retaliating against the tenants but rather they just want to live a peaceful life in their own home. The landlord L.L. is a diabetic and very recently had a heart attack and suffers from other health issues.

The tenants are disputing the Two Month Notice on the grounds that it was not issued in good faith. The tenant testified that she has been successful in two previous hearings in which the landlord attempted to have them evicted and she feels the Two Month Notice was issued in retaliation.

### Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* “Good Faith Requirement when Ending a Tenancy” provides the following guidance:

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.

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.

There is no dispute that this landlord/tenant relationship is strained as evidenced by the previous two hearings. However, I find that the fact the landlord was not successful in those hearings is not on its own determinative of an ulterior motive to end the tenancy. I accept the landlord’s testimony that they intend in good faith to occupy the rental unit themselves and use it as a workout area. I accept the landlord’s testimony that for health-related reasons they need to do what is necessary to eliminate added stress in their lives and taking back the rental unit which has been a cause of added stress and utilizing it for exercise space is their true intention. I find the landlord is within their right under the Act to do so. If the landlord turns around and re-rents the unit and does not use the space as intended, there are consequences under the Act for the landlord failing to do so.

The tenants’ application to cancel the Two Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

### Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on October 31, 2022**. Should the tenants 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: October 13, 2022

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Residential Tenancy Branch