



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, MNDCT, RP, LRE, OLC, FFT

### Introduction

This hearing dealt with the tenants' application, filed on December 29, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, dated December 15, 2022, and effective March 31, 2023 ("2 Month Notice"), pursuant to section 49;
- a monetary order of \$700.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to make repairs to the rental unit, pursuant to section 32;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two landlords, "landlord CHT" and landlord SQL ("landlord"), the landlords' lawyer, the landlords' English language interpreter, and the two tenants, tenant KM ("tenant") and "tenant MY," attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 73 minutes from 9:30 a.m. to 10:43 a.m.

I informed both parties that they were not required to rush through their submissions or evidence, because I would grant an adjournment of this hearing, if it did not finish within the 60-minute maximum hearing time. They affirmed their understanding of same.

The landlords intended to call their son, “witness WT,” at this hearing. He was excluded from the outset of this hearing. He did not return to testify. At the end of this hearing, the landlords’ lawyer stated that the landlords did not want to call witness WT to testify, despite being provided with a full opportunity for same.

Tenant MY stated that she did not require an English language translator at this hearing. She stated that English was not her first language, but she wanted the tenant, her husband, to speak on her behalf and explain things to her during this hearing. I asked her to let me know if she required me to clarify and explain any information during this hearing, and to answer any questions.

All hearing participants confirmed their names and spelling. The landlords’ lawyer and the tenant provided their email addresses for me to send this decision to both parties after this hearing.

The landlords confirmed that they co-own the rental unit. They said that their lawyer had permission to represent them and identified him as their primary speaker. They stated that their English language translator had permission to assist them at this hearing. The landlords’ lawyer provided the rental unit address.

The tenant identified himself as the primary speaker for the tenants. Tenant MY agreed to same.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them or represent them as their agent or advocate. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

At the outset of this hearing, the tenant confirmed that the tenants wanted to discuss settlement of their application and listen to the landlords’ offers for settlement. The tenants then revoked their agreement. The tenants later agreed to a settlement with the

landlords, after the tenants proposed their own offer, which was accepted by the landlords, and then the tenants revoked their own offer.

The tenants confirmed that they did not want to settle their application, they wanted to proceed with this hearing, and they wanted me to make a decision. Both parties were given multiple opportunities to settle this application and the tenants declined to do so. Both parties discussed settlement during this hearing, but the tenants declined to settle. The tenants were provided with ample and additional time to speak privately during this hearing, to decide whether they wanted to settle their application with the landlords.

I repeatedly cautioned the tenants that if I dismissed their application without leave to reapply, I would uphold the landlords' 2 Month Notice, end the tenants' tenancy, and issue a two (2) day order of possession against the tenants. The tenant repeatedly affirmed that both tenants were prepared for the above consequences if that was my decision. Tenant MY refused to affirm that she was prepared for the above consequences but stated that she did not want to settle this application with the landlords.

I repeatedly cautioned the landlords that if I cancelled their 2 Month Notice, I would not issue an order of possession to them against the tenants, and this tenancy would continue. The landlords' lawyer repeatedly confirmed that the landlords were prepared for the above consequences if that was my decision.

#### Preliminary Issue – Service of Documents

The landlords' lawyer confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both landlords were duly served with the tenants' application.

The landlords' lawyer said that the landlords received the tenants' evidence late, less than 14 days prior to this hearing. He stated that the tenants' evidence should be inadmissible at this hearing.

In accordance with section 88 of the *Act*, I find that both landlords were duly served with the tenants' evidence. Although the tenants' evidence was received late by the landlords, less than 14 days prior to this hearing, contrary to Rule 3.14 of the RTB *Rules*, I informed both parties that I would consider the tenants' evidence at this hearing and in my decision, since the landlords received it, reviewed it, submitted their own evidence, and could verbally make submissions to respond to the tenants' evidence at

this hearing. I notified them that the landlords failed to show any prejudice, as a result of receiving the tenants' evidence late. The landlords' lawyer confirmed his understanding of same.

The tenant affirmed receipt of the landlords' written evidence. He said that the tenants received the landlords' evidence late because it was not 14 days prior to this hearing. He confirmed that the tenants received the landlords' evidence at least 7 days prior to this hearing. He said that the tenants mistakenly believed that the landlords' evidence was due 14 days prior to this hearing because that is what the tenants were told by the RTB, since the tenants were told they were the respondents in this application.

In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' evidence. I informed both parties that I would consider the landlords' evidence at this hearing and in my decision, since the tenants received it at least 7 days prior to this hearing, in accordance with Rule 3.15 of the *RTB Rules*. I notified them that the tenants were the applicants, since they filed this application, and the landlords were the respondents, since the tenants filed this application against the landlords.

Pursuant to rule 64(3)(c) of the *Act*, I amend the tenants' application to include the tenant's full legal first name, rather than his nickname, and to correct the spelling of tenant MY's surname. The tenant consented to these amendments. The landlords did not object to same. I find no prejudice to either party in making these amendments.

The landlords' lawyer stated that the tenants were served with the landlords' 2 Month Notice on December 15, 2022, by way of posting to their rental unit door. The tenant confirmed receipt of the landlords' 2 Month Notice on the above date by the above service method. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlords' 2 Month Notice on December 15, 2022.

#### Preliminary Issue – Inappropriate Behaviour by the Tenants during this Hearing

Rule 6.10 of the *RTB Rules* states the following:

*6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*  
*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout this hearing, the tenants repeatedly interrupted me, argued with me, repeatedly asked me the same questions, and repeated the same arguments.

During this hearing, both tenants argued with me about my decision to consider the landlords' evidence at this hearing and in my decision.

Tenant MY could be heard repeatedly yelling in the background, while the tenant was speaking, throughout this hearing. She was upset and argumentative throughout this hearing. I asked her to inform me if she required me to explain or clarify any information, but she continued to complain and argue with the tenant, claiming that English was his native language and not hers. She refused to answer my repeated questions, including whether she was prepared for the consequences of losing this hearing, if I upheld the landlord's 2 Month Notice, and ended the tenants' tenancy.

I repeatedly cautioned the tenants, but they continued with their inappropriate behaviour. This hearing lasted longer because of the repeated interruptions, arguments, inappropriate behaviour, and repeated settlement offers and revoking of their offers by both tenants.

However, I allowed both tenants to attend this full hearing, despite their inappropriate behaviour, in order to allow the tenants to settle this application, as requested by them at the outset of this hearing, and to present their application, submissions, and evidence, when they revoked their settlement and asked me to make a decision.

#### Preliminary Issue – Severing and Dismissing the Tenants' Claims

The following RTB *Rules* are applicable and state (my emphasis added):

##### *2.3 Related issues*

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

##### *6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

At the outset of this hearing, I informed both parties that Rules 2.3 and 6.2 of the RTB *Rules of Procedure* allow me to sever issues that are not related to the tenants' main application. The tenants applied for 6 different claims in this application.

I informed both parties that the tenants were provided with a priority hearing date, due to the urgent nature of their application to cancel the 2 Month Notice. I notified them that this was the central and most important, urgent issue to be dealt with at this hearing. They affirmed their understanding of same.

I informed both parties that the tenants' remaining claims in their application, relate to an ongoing tenancy, except for their monetary claim. I notified them that if this tenancy continued, the tenants' ongoing tenancy claims would be dismissed with leave to reapply. I informed them that if this tenancy ended, the tenants' ongoing tenancy claims would be dismissed without leave to reapply. I notified them that the tenants' monetary claim was dismissed with leave to reapply, regardless of whether this tenancy continues or ends. I notified them that the tenants' remaining claims were non-urgent lower priority issues, and they could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. They affirmed their understanding of same.

As this tenancy is ending, the tenants' application for an order requiring the landlords to make repairs to the rental unit, an order restricting the landlords' right to enter the rental unit, and an order requiring the landlords to comply with the *Act, Regulation* or tenancy agreement, is dismissed without leave to reapply, since they are ongoing tenancy claims only.

After 73 minutes of this 60-minute maximum hearing time, there was insufficient time to deal with the tenants' monetary claim at this hearing. Both parties submitted voluminous documents and evidence for this hearing.

The tenants' application for a monetary order of \$700.00 for compensation for damage or loss under the *Act, Regulation* or tenancy agreement, is severed and dismissed with leave to reapply. The tenants are at liberty to file a new RTB application and pay a new filing fee, if they want to pursue these claims in the future.

### Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an order of possession for landlords' use of property?

Are the tenants entitled to recover the \$100.00 filing fee paid for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The landlords' lawyer and the tenant agreed to the following facts. This tenancy began on December 1, 2016. Monthly rent in the amount of \$750.00 is payable on the first day of each month. The tenants' monthly rent of \$750.00 has remained the same throughout their tenancy at this rental unit. A security deposit of \$375.00 was paid by the tenants and the landlords continue to retain this deposit in full. A written tenancy agreement was not signed, only a verbal agreement was reached between both parties. The tenants continue to occupy the rental unit, which is a ground-level suite in a house. The landlords occupy a different suite and landlord CHT's parents occupy a different suite in the same house as the tenants.

Both parties provided copies of the landlords' 2 Month Notice. Both parties agreed that notice states the following reason for seeking an end to this tenancy (which was read aloud by the tenant during this hearing):

- *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).*
- *Please indicate which family member will occupy the unit.*
  - *The father or mother of the landlord or landlord's spouse.*

The landlords' lawyer made the following submissions. The landlord's parents intend to move into the rental unit. The tenants submitted 2 photographs of an "old man" and an "old lady" standing in front of the rental unit, which are landlord CHT's parents. The landlords provided a medical note from the doctor of the landlord's father, which

indicates that he is in the advanced stages of lung disease and the doctor recommends that the landlord look after him. The landlord's English name, rather than her legal name SQL, was used in that doctor's note. There are no other available rooms at the house, except the tenant's rental unit. The landlord's parents do not want to live in the same suite as landlord CHT's parents. The tenant submitted a rental advertisement in Chinese. The landlords did not post this advertisement and there are no dates or times on it. The tenants took a screenshot from their computer and the landlords dispute the authenticity of this document. The landlord suggested that the tenants move out of the rental unit in February 2022, but the landlords did not provide a formal written notice or a notice to end tenancy to the tenants, it was only a verbal conversation. At that time, the landlord indicated that her brother was going to move into the tenants' rental unit. The landlords provided a copy of the driver's license of the landlord's brother, which indicates that he lives in Alberta in his own residence, and he does not intend to move into the rental unit. The landlords' 2 Month Notice is not for the landlord's brother to move into the rental unit.

The tenant testified regarding the following facts. This is the tenants' second time at the RTB. A different Arbitrator at the previous RTB found that the landlords' 2 Month notice was ineffective because it was not signed or dated. The landlords' evidence was excluded, and the landlords did not meet the burden of proof. The landlords are "abusing the system." The landlords changed their story, first saying that the landlord's brother would move into the rental unit, and later the landlord's parents would move into the rental unit. The 2 Month Notice has multiple pages, but it is only valid if all pages are served to the tenants. The tenants only received pages 1 and 2 of the notice from the landlords. Each "respondent" tenant was not served with a copy of the notice. The landlords are not acting in good faith. On January 15, February 2, and April 10, the landlord indicated that her brother was coming from China and the tenants had to move out, but her brother does not qualify as a close family member and then the landlord changed her story. The landlords have to have honest intention and no dishonest motive. The landlords have the burden of proof to act in good faith. There is an e-mail from February 3, where tenant MY had a conversation with the landlord, who said that her brother would move into the rental unit with his kids. On January 15, 2021, the landlords turned off the heat and it was a cold day, so the tenants got sick. On April 10, 2022, the landlord said that her brother landed and he had no luck finding a place. The RTB told the tenants that they had 7 days because they were the respondents in this application, so it was a "misunderstanding." The landlords' evidence on page 7, says that the landlords posted the paperwork on the tenants' door, but you cannot tell what is in the bag of evidence, as there is no date or proof of residence. The landlords' evidence on page 8 was put in another bag on the tenants' door with the time but no



clear date or how many pages. The landlords can take photos of posting evidence and then take the evidence away.

The tenant stated the following facts. The landlords' bag of evidence on page 9 has no date, time or contents. Why is the landlord tampering with the tenants' mail. In the landlords' evidence on page 10, the 2 Month Notice was served but the landlords were tampering with the tenants' mail, and you cannot tell the number of pages. The landlords' evidence on page 15 talks about good faith and no ulterior motive, it is a legal concept, there is no intent to defraud, and the landlords cannot act dishonestly. In the landlords' evidence on page 17, there is no RTB-26 form. In the landlords' evidence on page 20, how can the landlords prove the identity of the landlord's parents and brother. Everyone has health problems and even the tenant has a heart condition, but people recover and are discharged. There is no proof regarding the landlord's father and the medical note says a different name for the landlord and the tenants do not know that name as they know the landlord by her full name, SQL. In the landlords' evidence at page 23, the landlords' claim that it is the landlord's brother, but where is the evidence to prove his identity. It is the landlords' obligation to prove the identity of the landlord's parents and brother.

The landlords' lawyer made the following submissions in response. There was a previous RTB hearing, where the landlords' 2 Month Notice was cancelled, due to procedural issues, not substantive findings. In the last 3 to 4 pages of the landlords' evidence, there are two photographs of the landlord's father and there is information regarding his lung disease and the discharge plan. The landlords issued the 2 Month Notice in good faith to the tenants. The landlord currently visits her parents every day and it is hard for her to do with her work. The landlord's parents are elderly. It is difficult for the landlord's mother to take care of the landlord's father on her own.

### Analysis

#### Credibility

I found that the submissions of the landlords' lawyer were clear, convincing, credible, and consistent. I found that he provided his submissions in a calm, candid, and straightforward manner. I found that his submissions did not change based on my questions. I found that he answered my questions directly and referred to relevant issues, regarding the 2 Month Notice.

Conversely, I found that the tenants were less credible witnesses. I found the tenant's testimony to be inconsistent, unclear, and confusing. I found that he provided his testimony in an upset and agitated manner. He mainly provided irrelevant information, rather than discussing the tenants' reasons for disputing the 2 Month Notice.

I provided the tenants with ample and additional time during this hearing to look up their evidence and to speak privately with each other regarding settlement and this hearing. The tenants filed this application on December 29, 2022, and this hearing occurred on May 2, 2023, so the tenants had ample time of over 4 months to prepare for this hearing and submit relevant evidence.

The tenant's main submissions, throughout this hearing, were that the landlords could not prove how or when they served the tenants with their evidence, and how many pages were in the document packages posted to the tenants' rental unit door. This is despite the fact that the tenants admitted service of the landlords' evidence at least 7 days prior to this hearing, in compliance with Rule 3.15 of the RTB *Rules*, and I made a decision regarding same at the beginning of this hearing and repeated this decision to the tenants throughout this hearing.

#### *Application and Rules*

The tenants, as the applicants, received an application package from the RTB, including instructions regarding the hearing process. The tenants received a document named "Notice of Dispute Resolution Proceeding," dated January 6, 2023 ("NODRP") from the RTB, after filing this application. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (my emphasis added):

***The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.***

- ***It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).***
- Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).

- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- ***A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.***

The NODRP states that a legal, binding decision will be made and links to the RTB website and *Rules* are also provided in the NODRP. I informed both parties that I had 30 days to issue a written decision after this hearing. Both parties affirmed their understanding of same.

The tenants received a detailed application package from the RTB, including the NODRP document, with information about the hearing process, notice to provide evidence to support their application, and links to the RTB website. It is up to the tenants to be aware of the *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the tenants to provide sufficient evidence of their claims, since they chose to file this application on their own accord.

The following RTB *Rules* are applicable and state the following, in part:

*7.4 Evidence must be presented*

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the tenants did not sufficiently explain or present their application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during this lengthy 73-minute hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*. The tenants did not sufficiently reference, review, or explain their documentary evidence during this hearing.

### Findings

The tenants stated the following, regarding their application to cancel the 2 Month Notice, on the RTB online dispute access site:

*“The Landlord is using the two month notice to circumvent the Rtb Rent Increase Limit to get new tenants in and using various excuses to dishonestly evict us. -not giving us our mail” [sic]*

According to subsection 49(8) of the *Act*, tenants may dispute a 2 Month Notice by making an application for dispute resolution within 15 days after they received the notice. The tenants claimed that they received the notice on December 15, 2022. The tenants confirmed that they filed this application to dispute the notice on December 29, 2022.

Therefore, the tenants are within the 15-day time limit under the *Act*. Accordingly, where the tenants apply to dispute a 2 Month Notice by the deadline, the burden of proof is on the landlords to prove the reason on the notice. I informed both parties of the above information during this hearing and they affirmed their understanding of same.

Section 49(3) of the *Act* sets out that landlords may end a tenancy at a rental unit if the landlords or their close family members intend, in good faith, to occupy the rental unit.

Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, states the following, in part, in section “B. Good Faith:”

*In Gichuru v Palmar Properties Ltd. (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honest intention with no ulterior motive. When the issue of an ulterior motive for an eviction notice is raised, the onus is on the landlord to establish they are acting in good faith: Baumann v. Aarti Investments Ltd., 2018 BCSC 636.*

*Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy*

*agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).*

*If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.*

*If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may suggest the landlord is not acting in good faith in a present case.*

*If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.*

*The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.*

I find that the landlords provided sufficient testimonial and documentary evidence that the landlord's parents intend, in good faith, to occupy the rental unit, pursuant to the 2 Month Notice.

The landlords are both co-owners of the rental unit. The landlord's parents qualify as close family members to occupy the rental unit, pursuant to section 49 of the Act. The tenants did not dispute same during this hearing. I find that the landlords have no ulterior motives to end this tenancy.

I find that the landlord's parents intend to occupy the rental unit, to be closer to the landlord, who can medically care for them. I accept that the landlord currently travels back and forth to visit her parents, while working, which is difficult for her to do. I accept that the landlord wants her parents to occupy the same house as her, so that she can care for them. I accept that landlord CHT's parents and the landlords already occupy different suites in the same house and do not want to share their suites with the landlord's parents. I accept that there are no other suites for them to occupy in the house, except for the one remaining suite, which is the tenants' rental unit.

I accept the hospital discharge plan of the landlord's father, which was provided by the landlords as evidence. It indicates that he was in the hospital from November 19, 2021 to November 21, 2021, due to a bacterial and fungal lung infection, and that he also has

severe COPD, as another medical condition. It lists his other medical conditions, medications, treatments, tests, and a plan for discharge. The document indicates that it is a copy, it has the name of the landlord's father, and the name of his hospital doctor and family doctor. I accept the submissions of the landlords' lawyer that this hospital discharge report is for the landlord's father. I accept that the landlord's father's surname is the same as the landlord's surname on this document. I find it is an authentic document. I find that it is not a fraudulent document, as purported by the tenants, with no sufficient evidence of same, only speculation.

I accept the medical note, dated October 11, 2022, provided by the landlords as evidence. It is signed by the landlord's father's family doctor. The doctor's name and the landlord's father's name match the names on the hospital discharge report from November 2021. It states that the landlord's father has: "*severe advanced end stage lung disease with emphysema and brochietasis. He will be requiring more care in the near future. It would be beneficial for him and his wife to live with their daughter so she could look after him.*" I accept the submissions of the landlords' lawyer that this medical note is for the landlord's father from his family doctor and references the "English name" of the landlord, rather than her full legal name. I accept that the landlord's father's surname is the same as the landlord's surname on this document. I find it is an authentic document. I find that it is not a fraudulent document, as purported by the tenants, with no sufficient evidence of same, only speculation.

I find that the tenants did not provide sufficient evidence to dispute the landlords' 2 Month Notice and to support their assertion that the landlord's parents do not intend, in good faith, to occupy the rental unit.

I find that the tenants failed to provide sufficient evidence of the following: that the landlords' intention is to re-rent the unit for higher rent without occupying it for at least 6 months, or evidence to show that the landlords have ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, to suggest that the landlords are not acting in good faith. This is as per Residential Tenancy Policy Guideline 2A above.

I find that the landlords do not intend to re-rent the rental unit to new tenants, to obtain a higher rent. The tenants did not make or explain this argument at this hearing, they only stated it in their RTB online dispute access site details. I find that the tenants' assertion that the landlords intend to re-rent the property to new tenants at a higher rent, is merely speculation and conjecture. The tenants did not provide sufficient documentary or

testimonial evidence that the landlords intended to raise their rent or that the landlords intended to re-rent the unit to new tenants to obtain a higher rent.

I find that the tenants' rent has not been increased at all by the landlords, during their approximately 6.5 years of tenancy at this rental unit, from December 1, 2016 to the date of this hearing, May 2, 2023. The tenants did not indicate that their rent was being increased by the landlords, at any time in the future during this tenancy. The tenants did not indicate that the landlords attempted to increase their rent at any time in the past, during this tenancy. I find that this demonstrates that the landlords are not seeking a financial profit, as they have not increased the tenants' rent, since the beginning of their tenancy, despite their ability to do so, as per the RTB allowable *Regulation* amounts.

The landlords' lawyer submitted that the landlords did not post any rental advertisements for the rental unit, and the tenants provided a "screenshot" of an advertisement in the Chinese language, which could not be authenticated, and there were no dates or times as to when this advertisement was posted. The tenants provided what they purport to be a rental advertisement, which appears to be cut and paste into the body of a different document, which is signed by the tenant on the same page. It does not indicate the landlords' names, the date, the time, the rental unit address, that the rental unit is being advertised for re-rental, any rental price, any rent terms. Part of the information is in a different language, which has not been authenticated by anyone or translated into English by a certified translator. The tenants did not sufficiently review, reference or explain same, during this hearing.

Both parties agreed that there was a previous RTB hearing regarding two previous 2 Month Notices issued by the landlords to the tenants. The tenants provided the file number for this previous hearing, which appears on the cover page of this decision. A copy of the previous RTB decision was provided for this hearing. Both parties agreed that the landlords' two previous 2 Month Notices were cancelled by the Arbitrator based on technical procedural rules, not based on their merits or substantive findings.

I reviewed the previous RTB decision, dated November 3, 2022, which confirms that the landlords' first 2 Month Notice was cancelled because it was not signed or dated so it did not comply with section 52 of the *Act*, and the second 2 Month Notice was cancelled because the landlords failed to prove service of the notice to the tenants. Therefore, I find that this does not demonstrate a bad faith intention by the landlords, because no meritorious or substantive findings were made by the Arbitrator, regarding either of those 2 Month Notices, only technical procedural findings were made. I find that the

tenants were not evicted after the previous RTB hearing and this tenancy continued. I find that the previous RTB hearing does not indicate a pattern of behaviour of eviction by the landlords.

I find that the tenants failed to provide sufficient evidence that the landlords own other properties, which the landlord's parents can occupy. The landlords' lawyer confirmed that this is the only available unit, owned by the landlords, where the landlord's parents can occupy. I find that the tenants failed to provide sufficient evidence that the landlord's parents can occupy comparable vacant rental units at this property or any other properties.

The tenant alleged that the landlords changed their mind because they were initially intending to move the landlord's brother into the rental unit, who does not qualify as a close family member. The landlords' lawyer agreed that this was erroneous and that it was only a verbal discussion, since no formal notices to end tenancy, including any 2 Month Notices, were issued to the tenants for same. The tenants did not dispute same at this hearing. I find that this does not question the landlords' good faith intentions, since it was a verbal conversation and formal written notices to end tenancy were issued to the tenants, by the landlords, for same. I also find that the landlords provided sufficient documentary evidence, by way of the driver's license of the landlord's brother, which is still valid and expires on June 10, 2027. I accept that the landlord's brother's surname is the same as the landlord's surname on this document. I find it is an authentic document. I find that it is not a fraudulent document, as purported by the tenants, with no sufficient evidence of same, only speculation.

The tenants alleged that the landlords cannot prove the identity of the landlord's parents or brother. He claimed that the doctor's note uses a different name for the landlord, the driver's license does not prove the identity of the landlord's brother, and the photograph of the landlord's parents may not be them. I find that the tenants did not provide sufficient evidence to question or dispute the authenticity or contents of the landlords' above documents. I find that the tenants cannot disprove the landlords' documents, just by raising mere speculation. I find that the landlords' lawyer provided sufficient and honest submissions and the landlords submitted sufficient and authentic documentation for this hearing.

The tenant claimed that "everyone gets sick and discharged" and that he personally has health problems, including heart issues. The tenant's medical health is not relevant to this application.



The tenant claimed that the landlords' 2 Month Notice was invalid because all 4 pages were not served to the tenants, only the first 2 pages were. The tenants did not provide sufficient evidence that they were not served with all 4 pages of the notice. Further, even if the tenants were not served with all 4 pages of the notice, pages 3 and 4 are only information pages, so I find that this does not invalidate or cancel the notice. Page 4 of the notice, under section 7 states the following: *"An error in this Notice or an incorrect move-out date on this Notice does not make it invalid. An arbitrator can order that the tenancy ends on a date other than the date specified on this Notice."*

The tenants admitted service of the first two pages of the notice, which include all of the information completed by the landlords, including both parties' names, addresses, and contact information, the rental unit address, the date the notice was signed, the effective date of the notice, the reason for ending this tenancy, the signature of the landlord, and is in the approved RTB form. The above information is all that is required for the notice to comply with section 52 of the *Act*, which I find it does.

I find that the landlords did not waive their right to enforce the 2 Month Notice, by accepting rent from the tenants after the effective date of the notice. The landlords did not withdraw or cancel the notice prior to or during this hearing, or tell the tenants that it was withdrawn or cancelled. The landlords attended this hearing with their lawyer and continued to pursue an order of possession against the tenants. The landlords are entitled, pursuant to section 26 of the *Act*, to receive rent from the tenants, while the tenants are still occupying the rental unit. I find that the landlords accepted rent from the tenants based on use and occupancy only, and it did not reinstate this tenancy.

The tenants did not indicate that they believed or were told by the landlords that their tenancy was reinstated or that the 2 Month Notice was cancelled. The tenants did not cancel this hearing or withdraw their application. The tenants appeared at this hearing to pursue a dispute of the notice and indicated that they did not vacate the rental unit, nor did they have any intention of doing so.

On a balance of probabilities and for the above reasons, I find that the landlord's parents intend to occupy the rental unit in good faith for at least 6 months. I find that the landlord's parents qualify as close family members of the landlord owner, under section 49 of the *Act*. I find that the landlords have met their onus of proof under section 49 of the *Act*.

I dismiss the tenants' application to cancel the landlords' 2 Month Notice, without leave to reapply. Pursuant to section 55 of the *Act*, I grant an order of possession to the

landlords, effective two (2) days after service on the tenants. The effective date on the notice, of March 31, 2023, has long passed, since this hearing occurred on May 2, 2023. I find that the landlord's notice complies with section 52 of the *Act*.

Throughout this hearing, I repeatedly cautioned the tenants that I would issue a two (2) day order of possession against them, if I upheld the landlords' 2 Month Notice and ended this tenancy.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords. This claim is dismissed without leave to reapply.

### Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an order of possession to the landlord(s), effective two (2) days after service on the tenant(s). The tenant(s) must be served with this order. Should the tenant(s) 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: May 02, 2023

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Residential Tenancy Branch