



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants seeking cancellation of a 2 Month Notice to End Tenancy (the "Notice") for the landlord's use of property.

The parties appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the tenant is entitled to an order cancelling the Notice to End Tenancy?

### Background and Evidence

The tenant submitted that this month to month tenancy started approximately four years ago, monthly rent is now \$600.00, although the tenant stated that he is currently paying \$632.00 to account for increased utility costs by the landlord and the tenant did not pay a security deposit.

The landlord submitted that the tenancy started seven years ago.

The rental unit is the basement suite located below the landlord and his wife's residence.

I heard testimony that tenant GB is the former son-in-law of the landlord and tenant HB is the grandson of the landlord and the son of tenant GB.

The subject of this dispute is the *2 Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") issued February 29, 2012, according to the landlord's testimony,

and requiring the tenants to vacate the rental unit by April 30, 2012. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing and testified as to why the tenants had been served with the 2 Month Notice to End Tenancy for Landlord's Use of Property.

In support of his Notice, the landlord submitted that as he and his wife are 76 years of age and that his son intends on selling his condominium and moving into the basement suite. The landlord submitted that he needs help with cars, keeping the premises clean and to provide upkeep.

The landlord submitted a note from his son, dated March 16, 2012. The note stated that he, the son, intended on selling his 1 bedroom condominium and moving into the rental unit on July 1, 2012, or as close as possible to that date. The note further explained that his, the son, 1 bedroom condominium was too small to accommodate his live-in girlfriend's teenage children when they stay overnight.

The note also explained that the son, if moving into the basement suite, would be close enough to give his parents a hand.

In response, the tenant stated that he had been injured playing rugby, which left him physically challenged. The tenant stated that during each of the last four years he had fallen on the spiral stairs leading to his rental unit as there was no railing or lighting, which caused further injuries.

The tenant submitted that he asked the landlord repeatedly to install a railing and lighting for his safety, but that it was never done.

The tenant submitted that he appreciated living in the rental unit and did not want to bother the landlord with most things; however it was only due to the landlord's lack of response in installing the railing and lighting that he contacted a lawyer to address the concerns.

The lawyer sent the landlord a letter, dated February 17, 2012, which the tenant contends is the reason he received the Notice.

Additionally, the tenant stated that, due to the lack of soundproofing in the home, he overheard the landlord's wife state that the reason the landlord sent the Notice was because the landlord was "pissed off."

In response the landlord denied that the letter from the lawyer was the reason the Notice was issued, further stating that "this was always the plan." The landlord further went on to state he offered the home to tenant GB so that his grandson, soon to be 19 years old, would be assured of having a home while he was in school.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Once the tenant made an application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

The Notice was issued pursuant to section 49(3) of the Act which provides “a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or close family member of the landlord intends in good faith to occupy the rental unit”.

Guidance for the interpretation of this section of the *Act* comes from other decisions, case law and the Residential Tenancy Branch Policy Guideline.

The relevant Policy Guideline is section 2, and states, in part:

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.

The tenant in this case called into question the landlord's good faith intention. Therefore I find the landlord has the burden to demonstrate that he truly intends to do what he indicated on the Notice and that the landlord did not act dishonestly or with an ulterior motive for ending the tenancy.

After considering all of the written and oral evidence submitted for this hearing, I find that the landlord has provided insufficient evidence to show that he issued the Notice in good faith for the intended purpose.

In reaching this conclusion, I was persuaded by the timing of the letter from the tenant's lawyer to the landlord, which was received by the landlord shortly before the Notice was issued.

I was further influenced by the landlord's statement that he always planned on having the tenants leave when his grandson was of age, which I find further demonstrates that the landlord had an ulterior motive when issuing the Notice.

I was further persuaded by the lack of compelling evidence from the landlord, as the only evidence in support of the Notice submitted was a short note from his son. I find the note itself showed a lack of clear intent or demonstrated planning by the son in re-locating to the rental unit and the note appeared to be a quick afterthought.

I also considered that the landlord failed to show that either he or his wife required live-in help or assistance.

In light of the above, I find the landlord submitted insufficient evidence to prove on a balance of probabilities that his son intends in good faith to move in to the rental unit.

### Conclusion

As a result, I find the landlord's 2 Month Notice to End Tenancy for Landlord's Use, issued and dated February 29, 2012, is not valid and not supported by the evidence, and therefore has no force and effect. I **order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

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: March 23, 2012.

---

Residential Tenancy Branch