



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, O

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated September 3, 2016 ("2 Month Notice"), pursuant to section 49;
- other unspecified remedies.

The landlord and his agent son, BC (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had authority to speak on his behalf at this hearing. This hearing lasted approximately 43 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant confirmed receipt of the landlord's 2 Month Notice on September 3, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on September 3, 2016.

The tenant stated that she applied for "other" unspecified remedies because she wanted a monetary order from the landlord. I advised the tenant that I could not consider that application because the landlord had no notice of it. The tenant did not specifically apply for a monetary order, nor did she indicate in the "details of the dispute" portion of her application that she was seeking a monetary order or the amount of such order. I notified the tenant that she was free to file a future application specifically seeking a

monetary order and indicating the amount, along with evidence of her monetary claim. Therefore, this portion of the tenant's application is dismissed.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use of property?

### Background and Evidence

While I have turned my mind to the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on December 1, 2015. Monthly rent in the amount of \$900.00 is payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit, which is the basement suite of the landlord's house, where the landlord resides on the upper floor. Both parties signed a written tenancy agreement but a copy was not provided for this hearing.

The tenant seeks to cancel the landlord's 2 Month Notice, which states an effective move-out date of November 30, 2016. A copy of the notice was not provided for this hearing but both parties agreed on the content of it. The notice indicates the following reason for seeking an end to this tenancy:

*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).*

The landlord stated that his daughter and future son-in-law intend to occupy the rental unit once they get married. He stated that his daughter's current apartment is not big enough for two people to live in because it is only a one-bedroom apartment of approximately 400 square feet. He said that they need more room for storage of their belongings plus an extra bedroom. The landlord said that the rental unit is two bedrooms at approximately 700 square feet. The tenant disputed this, stating that her unit was only approximately 500 square feet and was "shaped like a shoebox" such that there was not a lot of storage space, only in the garage where the landlord's daughter is currently storing her belongings. The landlord agreed that his daughter has already

begun storing her belongings in the garage of the house. The landlord claimed that his daughter could not move into his unit in the upper part of the house because he wanted a separate suite from her. He claimed that his suite is approximately 1,000 square feet with two bedrooms and a den and that only he and his wife live there. He claimed that one of the rooms was a guest suite for his grandkids when they visited.

The tenant disputes the landlord's 2 Month Notice, stating that the landlord did not issue it in good faith. The tenant claimed that she rented one of the two bedrooms in her rental unit to an autistic person and the landlord has a problem with this person. The tenant said that the landlord advised her that the autistic person is "crazy" because he talks to himself and the landlord is afraid that the "house will burn down" with this person living there. The tenant maintained that the landlord has emailed her employer advising that the autistic person is a danger to the property and questioned the tenant as to her salary earnings and accused her of running a business in the unit. The tenant explained that she cares for the autistic person as part of her job but she is not running a business from the unit. She stated that she cares for the autistic person when she is home, as he is unable to function without assistance. The tenant testified that when she is away from the rental unit to work at her other job, she ensures that there are two caretakers to look after the autistic person and that he is not a danger to the rental unit.

The tenant said that the landlord has also issued the 2 Month Notice for other reasons. The tenant said that the landlord has a problem with her putting patio chairs on the front lawn, he asked her to move her moped after she filed this application for dispute resolution, he complained about her having a cat in her rental unit, and he claimed that she had too many boxes at her rental unit. The landlord denied having any other issues with the tenant.

### Analysis

Subsection 49(3) of the Act states that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

According to subsection 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. The tenant received the 2 Month Notice on September 3, 2016, and filed her application to dispute it on September 16, 2016. The tenant's application is within the 15 day time limit under the Act. Therefore, the onus shifts to the landlord to justify the basis of the 2 Month Notice.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*A claim of good faith requires honesty of intention with no ulterior motive...*

*...*

*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 that they do not have an ulterior motive for ending the tenancy.*

I find that the landlord had a number of ulterior motives for issuing the 2 Month Notice and it was not issued in good faith. I accept the tenant's testimony that the landlord questioned her and her employer about the autistic person and raised concerns about his residency at the rental unit. I find that the landlord raising other concerns about the tenant's moped, lawn chairs and the cat, show that there are other reasons why the landlord may wish to end this tenancy, since these issues occurred at the time when the 2 Month Notice was issued to the tenant.

I also find that the landlord failed to show why his daughter must specifically occupy the tenant's rental unit. I find that the landlord's daughter can live in any other unit, including the landlord's own residence. The landlord did not cite any monetary or other concerns such as his daughter needing to be in a specific location. The landlord's daughter did not attend this hearing in order to testify on her own behalf. The landlord's daughter has already stored items in the garage at the rental unit and there is no reason why she needs to occupy the rental unit to use this extra storage space. I also question whether the landlord's daughter requires extra space because the tenant stated that the rental unit is only 100 square feet bigger than the landlord's daughter's current residence.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his burden of proof to show that his daughter and future son-in-law intend to occupy the rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice, dated September 3, 2016, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for the landlord's use of property. This tenancy continues until it is ended in accordance with the *Act*.

### Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated September 3, 2016 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for other unspecified remedies is dismissed.

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 26, 2016

---

Residential Tenancy Branch