



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords were represented by the landlord FM (the "Landlord") who confirmed she was authorized to represent both respondents.

As both parties attended the hearing I confirmed that there were no issues with service. I find that the tenant was served with the 2 Month Notice in accordance with section 88 of the *Act*, as the parties agreed that the landlords' 2 Month Notice was served on the tenant personally on November 15, 2016. The parties confirmed that on or about November 24, 2016 the tenant personally served the tenant's notice of dispute resolution on the landlords. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenant's application.

### Issue(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The parties agreed on the following facts. The tenancy commenced three or four years ago. The rental unit is a basement suite in a single family home and the landlords reside in the upper level of the home with their two adult children. Rent in the amount of \$625.00 is payable on the first of the month.

The reason indicated on the 2 Month Notice for seeking an end to this tenancy is that the rental unit will be occupied by the landlords' daughter. The date given on the 2 Month Notice that the tenant is required to vacate the rental unit is January 31, 2017.

There was a previous hearing of this matter on November 2, 2016 under the file number identified on the first page of this decision where another arbitrator issued an order cancelling the landlords' earlier 2 Month Notice issued on September 2, 2016. The other arbitrator found that while the landlords issued the 2 Month Notice stating their intention was to move an adult child into the rental unit, on a balance of probabilities the intention of the landlords was to first renovate and repair the rental unit for an unknown period of time.

The Landlord testified that their intention has always been to have an adult child, their daughter, move into the rental unit. The Landlord said that there has been confusion about whether renovations might be required prior to the adult child occupying the rental unit. The Landlord stated that the current plan is that the daughter first move into the rental unit, as it is usable, and to perform repairs or renovations to the rental unit on an ongoing basis as required.

The Landlord testified that the upper level where their daughter currently resides with the landlords and the landlords' other adult child, is crowded, noisy and has limited bathroom facilities leading to frustration for all residents. The Landlord testified that in addition to the family members their son's girlfriend often stays over forcing more sharing of amenities. The Landlord testified that as their daughter is an adult they want to allow her to enjoy certain independence and privacy but have concerns if she were to move out into a rental unit where they could not visit and check on her regularly. The Landlord testified that their daughter is a student and they want to provide an environment where she will be able to study free of distractions. The Landlord stated that because their daughter's school term begins in January and ends with exams in April they wish to have her moved into the rental unit as soon as possible to avoid causing stress during the academic year. The Landlord stated that they believe moving the daughter into the rental unit is an ideal solution for their family.

The landlords' daughter was called as a witness and testified that she is currently a nursing student attending a local college. She is not employed and while she wishes to

move out she does not want to incur unnecessary debt and thus believes that moving to the family owned rental unit would be a good fit. She testified that she finds it difficult to study in the upper level and believes that the privacy of the rental unit will allow her to concentrate on her studies. She testified that she intends to exclusively use the bathroom facilities of the rental unit. She testified that if there is a need for repairs or renovations to the plumbing in the rental unit in the future she may need to share the upstairs facilities for a time but until such time she does not intend to use the facilities of the upper unit.

The daughter's friend was called as a witness and gave evidence that she is aware that the daughter intends to move into the rental unit. She testified that she is unaware of any repairs and renovations that are required in the rental unit and if there are any what the scope of work required may be.

The tenant testified that he has been told contradicting information from members of the landlords' family regarding their intended usage of the rental unit. The tenant said that originally he was told that a family relative was to occupy the rental unit. The tenant testified that at various times he has been told by members of the landlords' family that the rental unit requires repairs of the plumbing, kitchen and sewage system. The tenant testified that he was told the daughter intends to continue using the upstairs bathroom facilities even while occupying the rental unit. The tenant also stated that there has only been one rent increase during his tenancy and believes that the possibility of setting a higher rental amount may contribute to the landlords' desire to end the tenancy.

Both parties agreed that, until recently, this has been a successful tenancy. The parties agreed that the tenant has been quiet, conscientious and timely in paying his rent and meeting his obligations. The landlord testified that while they do not wish to inconvenience the tenant they want to use the rental unit to house their daughter.

### 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 intends in good faith to have their daughter occupy the rental unit.

The tenant questions the intention of the landlords and raises a good faith argument about the landlord's 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.*

I find that the landlords have provided sufficient evidence to determine their motivation to let their daughter, a close family member, move into the rental unit. The landlords provided consistent, cogent evidence regarding their intention to have their daughter occupy the rental unit. They have addressed the concerns that there are ulterior motives or that they may not use the rental unit for the expressed reasons. I find that the testimony of the Landlord and the witnesses have clarified that any desire to repair or renovate the rental unit are secondary to their stated intent and purely in service of allowing their daughter to reside in the unit. I find that there is consistency in the two 2 Month Notices issued and the stated reason for ending this tenancy. While I accept the tenant's evidence that there was a period of confusion caused by the landlord when they initially outlined their intention to the tenant, I find that the confusion can be attributed to miscommunication rather than failure of good faith on the landlord's part. 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 the landlords intend that their daughter occupy the rental unit. I dismiss the tenant's 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...*

Although the parties had not provided a copy of the 2 Month Notice to the Residential Tenancy Branch by the time of the hearing, I asked the landlord to send this Notice to the Branch shortly after the hearing. As the tenant confirmed that he had received this Notice, there was no prejudice to the tenant in receiving this late evidence, which the tenant should have attached to his application for dispute resolution. As I have dismissed the tenant's application and after receiving and reviewing the 2 Month Notice 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 with an effective date of January 31, 2017.

Section 51 of the *Act* sets out the compensation due to a tenant who receives a notice to end tenancy for the landlord's use. The tenant is entitled to receive from the landlord an amount that is the equivalent of one month's rent or withhold the amount from the last month's rent. Based on the parties' evidence, it would seem that the tenant did not withhold one month's rent after having been issued the 2 Month Notice, nor have the landlords compensated the tenant the equivalent of one month's rent. In the event that this has not occurred, the landlords are responsible for compensating the tenant the equivalent of one month's rent in accordance with section 51 of the *Act*. The tenant is at liberty to submit a new application for dispute resolution to obtain this compensation if the landlords do not fulfill this requirement in a timely fashion and may also be entitled to receive reimbursement for his filing fee in the event that such an application is necessary.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is dismissed without leave to reapply. The tenant's application to recover the filing fee is also 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: January 11, 2017

---

Residential Tenancy Branch