



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property.

The tenant and one of the landlords attended the hearing, and the landlord also represented the other named landlord. Each of the parties in attendance gave affirmed testimony and the tenant was accompanied by another person to assist, who did not testify or take part in the proceedings. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began about 13 years ago. The landlords are the siblings of the tenant, and the rental unit is a modular home previously belonging to the parties' parents, which was transferred to the landlords' names prior to their mother's demise. The tenant pays no rent and has not paid a security deposit or pet damage deposit, and no written tenancy agreement exists.

On August 31, 2017 the landlord personally served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided as evidence for this hearing. It is dated August 31, 2017 and contains an effective date of

vacancy of October 31, 2017. The reason for issuing it states: "The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

The landlord further testified that the landlords would like to fix up the rental unit by painting, replacing carpets and other repairs and sell it. The landlords currently have an offer pending. It will be easier to sell after the tenant moves out. The home is entrusted to the landlords due to the tenant's disability and once sold, the tenant will receive a portion of the proceeds.

The tenant is disabled and has been cared for by his siblings, and was fine with moving out and told the landlord that he intended to cancel this hearing until talking to friends.

**The tenant** testified that he believed the rental unit was his home provided by his parents and that he would be able to stay in it for his life as long as he paid the bills. The tenant has had help with maintenance and housekeeping and the landlords have paid about \$9,000.00 or \$10,000.00 in upkeep, and pay the insurance and property taxes. The roof was replaced by the tenant's father before his demise.

The tenant further testified that his mother told him to look after the cat, and the tenant's case worker found another place for the tenant to live in but it doesn't accommodate the cat, who needs to be outdoors, or the tenant's ability to barbeque.

The house was put in the names of his siblings before their mother passed away, in protection of the tenant. The tenant has followed the rules imposed, such as no smoking inside or within 3 meters of doors or windows outside – there has been no smoking in the house.

The tenant doesn't think the right approach was taken and felt tricked into believing he would be able to move back into a renovated house, but realized very quickly that was not the case after his brother mentioned purchasing another and that the reason for evicting was to sell the rental property with no intent of allowing the tenant to move back in.

### Analysis

The *Residential Tenancy Act* allows a tenant to end a month-to-month tenancy without a reason, but a landlord may only end a tenancy for specific reasons. Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Act*, which can include the reason(s) for issuing it. In the case of a Two Month Notice to End Tenancy for Landlord's Use of

Property, the landlord must establish good faith intent to use the rental unit for the purpose set out in the notice.

I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*.

The landlord testified that it will be easier to sell the rental unit if the tenant moves out, and I suppose that may be true. However, I am not satisfied that painting and replacing carpeting require the rental unit to be vacant. In the normal course of things, people do not move out of their homes to make such repairs, and there is no evidence or testimony about more major repairs. The landlords wish to end the tenancy so they can update the rental unit and sell it. That does not satisfy the good faith requirement in law, and therefore, I cancel the notice.

### Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated August 31, 2017 is hereby cancelled.

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: December 13, 2017

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Residential Tenancy Branch