



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, OPL, FF-L, FF-T

### Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (the Act) for:

The landlord applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.
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The tenant applied for:

- cancellation of the landlord's 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 landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties acknowledged receipt of each other's documentary evidence.

### Issues to be Decided

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

Is either party entitled to recover the filing fee for this application?

### Background and Evidence

The landlord gave the following testimony. The tenancy began on or about October 15, 2016 on a fixed term of eight months. The tenancy is currently on a month to month basis. Rent in the amount of \$3000.00 is payable in advance on the first day of each month and the landlord holds a security deposit of \$1500.00. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on September 30, 2017 with an effective date of November 30, 2017. The landlord, who is the owner of the property, wants to move into the home with her husband and young son. The landlord testified that the home is less than a five minute walk from her son's school and was one of the primary reasons that they purchased the home. The landlord testified that her

brother tried to assist the tenant in finding other accommodations but the tenant refused. The landlord testified that she has been trying to work with the tenant since August 2017 but cannot wait any longer as her present housing situation will end on February 1, 2018. The landlord testified that they seek an order of possession.

The tenant gave the following testimony. The tenant testified that he feels that the notice is unfair as it was issued in the middle of winter and the middle of the school year. The tenant testified that he will move out on July 1, 2018. The tenant testified that he has young children that go to the school in the area and wants to continue without disruption. The tenant testified that "I don't think they're going to move in". The tenant testified that he thinks the landlord is going to re-rent the unit for more money.

### Analysis

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

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

*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. This might be documented through:*

*a Notice to End Tenancy at another rental unit;*

*an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or*

*a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.*

*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 landlord gave clear concise and credible testimony. She provided details as to the logistical and financial benefits for her to move close to her son's educational institution. The tenant failed to provide sufficient evidence of "bad faith". Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The Notice remains in full effect and force. As the landlord has been successful they are entitled to the recovery of the \$100.00 filing fee. I order that the landlord retain \$100.00 from the security deposit in full satisfaction of the claim.

### Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenants' application is dismissed without leave to reapply.

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 04, 2018

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Residential Tenancy Branch