



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FU, RUCHUAN C/O NOBLE & ASSOCIATES PROPERTY MGT.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) 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 the 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 affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent OC (the "landlord"). The tenant attended in person and was represented by his advocate SB (the "tenant").

As both parties were present service of documents was confirmed. The tenant testified that they were served with the 2 Month Notice on or about March 18, 2018. The landlord testified that they were served with the tenant's application for dispute resolution dated March 23, 2018 and evidentiary materials. The tenant confirmed they were served with the landlord's evidence. Based on the undisputed testimonies of the parties I find that they were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The parties agreed on the following facts. This tenancy is currently a month-to-month tenancy with rent of \$3,500.00 payable on the first of each month. The rental unit is a singled detached home.

The landlord issued the 2 Month Notice on or about March 5, 2018. The reason stated on the notice for the tenancy to end is that the landlord or a close family member intends to occupy the rental unit.

The landlord testified that the property owner intends to move into the rental unit with her family. The landlord was unable to describe the precise family composition but believes that it will be the landlord, her spouse and their children. The landlord was uncertain how many children there were but said that the timing of the move was intended to coincide with the end of the academic school year. The landlord testified that the family are currently residing in a neighboring municipality.

The landlord said that the parties entered into a fixed term tenancy on November 2017 for a period of a few months after which the tenancy would continue on a month-to-month basis. The landlord said that this agreement was made as the landlord wanted the tenancy to end and the tenant had indicated they were willing to vacate the rental unit in early 2018.

The landlord submitted into written evidence a copy of the landlord's driver's license showing the address changed to the dispute address and a screenshot of the landlord's cell phone account showing the delivery address changed to the dispute address. The landlord testified that they intended to update more accounts as evidence of their good faith intention to move into the rental unit but have not done so yet.

The tenant pointed out the "paucity of evidence" on the landlord's part of their intention to move into the rental unit. The tenant mentioned a recent attempt by the landlord to impose a rent increase. The tenant testified that the timing of the failed attempt at a rent increase being retracted shortly before the 2 Month Notice was issued raises doubts about the landlord's intentions.

### Analysis

In order to evict a tenant for landlord's use of the property the landlord has the burden of proving the reasons on the Notice.

The tenant raised the issue of the intention of the landlord and their confidence in the plan the landlord says they have; what I found was essentially a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes 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.

This Guideline 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.*

The tenant has raised the good faith intention of the landlord which I find has some basis. The timing of the 2 Month Notice so quickly after the failed discussion with the tenant about raising the monthly rent raises some doubt about the landlord's motivations. The landlord has provided little evidence of their bona fide intentions. I find that changing the delivery address of a driver's license and utility bill is an easily accomplished matter and not determinative of the individual's intention to relocate.

The agent for the landlord who appeared at the hearing had little information about the landlord's family composition and who would be moving into the rental unit. There was initial testimony that the occupants would be the landlord, their spouse and their children. At certain points the agent also said that the landlord's parents may also be moving into the rental unit. The agent said that they believe the landlord's spouse and parents are currently residing overseas but also said that they may all be living together as at the date of the hearing. While I found that the landlord's agent was forthright and sincere in their testimony it was clear that they had limited information.

I find on the balance of probabilities that there is reasonable doubt about the intention and motivation of the landlord to end this tenancy to occupy the rental unit as stated on the 2 Month Notice. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

As the application has merit I find that the tenant may recover the \$100.00 filing fee from the landlord by deducting the amount from the next months' rent due.

### Conclusion

The tenant's application to cancel the 2 Month Notice is allowed. The 2 Month Notice is of no continuing force or effect. This tenancy will continue until ended according to the Act.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing his monthly rent by that amount on his next monthly rental payment to the landlord.

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: June 7, 2018

---

Residential Tenancy Branch