



# Dispute Resolution Services

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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 landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") pursuant to section 49 of the *Act*; and
- Return of the filing fee pursuant to section 72 of the *Act*.

The tenant and the landlord attended the hearing. Both were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The landlord confirmed receipt of the tenant's dispute resolution and evidence package, while the tenant confirmed receipt of the landlord's evidentiary package. Both parties are found to have been served with these documents in accordance with the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use?

Can the tenant recover the filing fee from the landlord?

### Background and Evidence

Undisputed testimony was presented by the tenant that this tenancy began on December 1, 2015. Rent is \$985.15 and a security deposit of \$475.00 paid at the outset of the tenancy, continues to be held by the landlord.

On March 13, 2018 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the property ("2 Month Notice"). The reason cited on the 2 Month Notice was listed as follows; *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

As part of his evidentiary package, the landlord submitted a written submission detailing reasons why a caretaker was required on the premises. The landlord said that a caretaker was needed to take meter readings every two months, to allow and assist builders and other workers on the property, to act as security in the building, and to assist new tenants move into their apartments. In addition to the reasons cited above, the landlord said that it was a condition of his mortgage lender, insurance provider and of the municipality to have an onsite caretaker, if he were to participate in the Multi Family Crime Free Housing program.

The tenant questioned the good faith related to the issuance of the 2 Month Notice and argued that landlord's past actions evidenced that he did not truly intend to convert the rental unit for use by a caretaker. Specifically, the tenant cited a previous 2 Month Notice to End Tenancy that was served on a tenant for Landlord's Use of the Rental Property by the former owners of the property. The tenant said that former owners explained to her that the current landlord had instructed them to serve the tenant with the 2 Month Notice because it was a condition of the sale that the rental unit in question be vacant. In addition, the tenant cited rent increases above the allowable limit which had occurred in the apartment block following the landlord's purchase of the building in January 2018, and the tenant questioned why the landlord did not move a caretaker into the unit directly next to hers, which was available for April 1, 2018 as further evidence related to the lack of good faith in the issuance of the 2 Month Notice. She said that the unit next to hers was an exact replica of the unit she occupied and she argued that if it was the landlord's true intention to find a caretaker for the building, the owner would have provided this unit to the caretaker.

As part of her evidentiary package, the tenant included a copy a 2 Month Notice served by the former landlord on a previous tenant occupying unit #20 in October 2017. The reason cited on this notice was listed as being: *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to*

*give this Notice because the purchase or a close family member intends in good faith to occupy the rental unit.*

The landlord did not dispute that some rental increases above the allowable limit had occurred in the rental building following his purchase of the property; however, in his written submissions, the landlord said that these increases were all done by mutual agreement between the parties involved. The landlord continued in his submissions, stating that he at no point served any Notices to End Tenancy, nor did he request that one be served on any former tenants, and he explained that the rental unit next to the tenant was subject to a series of events which resulted in the unit being re-rented within a day. The landlord said that the tenants who occupied the unit gave late notice of their intention to vacate the premises. The landlord said that in an effort to save them from having to pay any outstanding rent, he re-rented the suite as quickly as possible, thus preventing the unit from being occupied by a caretaker.

### 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.

*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.*

This two part test requires a landlord to demonstrate that (i) they truly intend to use the premises for the purposes stated on the notice to end the tenancy and (ii) they must *not* have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

After considering all of the oral testimony presented, and after having carefully reviewed all of the evidence submitted, I find that the tenant has successfully disputed the landlord's 2 Month Notice. During the hearing the landlord repeatedly emphasized that he was truly motivated by a desire to fill the tenant's rental unit with a caretaker for the property. I find this difficult to reconcile with the fact that a nearly exact replica of the rental unit was free and available for this use in April 2018. I find it hard to accept the landlord's explanation that he was attempting to save the past tenant from potentially having to pay a further month's rent by re-renting the suite as quickly as possible. If the landlord truly intended to have a caretaker in the building, the past tenant's potential rental payments would not be his main priority.

Furthermore, I find the fact the landlord had issued a separate 2 Month Notice in October 2017 and canvassed other tenants in the building for increased rent to be an indication that the landlord has ulterior motives related to the issuance of the current 2 Month Notice. As part of the landlord's written submissions, the landlord asked that the tenant provide the previous October 2017 2 Month Notice to End Tenancy issued to a tenant in the building. The tenant was able to produce this document, and I have little reason to question its authenticity. The landlord failed to identify a person who was hired as a caretaker and provided vague reasons related to the building's needs, and as to why he sought a caretaker for the property three months after the building's purchase. The landlord said he was an experienced landlord who owned numerous other properties. One would therefore reason that the landlord would know from the outset of the purchase of his property that an onsite caretaker was required and would he would not have canvassed for increased rents, ignored an available rental unit for caretakers use or asked that a 2 Month Notice be issued to previous tenants in October 2017.

The tenant was successful in her application to cancel the landlord's 2 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

As the tenant was successful in her application, she may withhold \$100.00 from a future rent payment on **one** occasion in satisfaction for a return of the filing fee.

Conclusion

The tenant was successful in her application to cancel the landlord's 2 Month Notice to End Tenancy. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on **one** occasion, in satisfaction for a return of the filing fee.

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 8, 2018

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Residential Tenancy Branch