



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, LRE, MNDCT, MNRT, OLC

### Introduction

The tenants filed an application for dispute resolution on June 7, 2018, pursuant to section 59 of the *Residential Tenancy Act* (the “Act”). The tenants seek the following relief under the Act:

1. an order to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”);
2. an order to cancel a One Month Notice to End Tenancy for Cause;
3. an order to suspend or restrict the landlords’ right to enter the rental unit;
4. an order that the landlords comply with the Act, regulation, or the tenancy agreement;
5. a monetary order for damage or compensation; and,
6. a monetary order for the cost of emergency repairs.

A dispute resolution hearing was convened on September 25, 2018. Both tenants, one witness for the tenants, the landlords’ agent (referred to as the “landlord” where appropriate) and a witness for the landlords, attended the hearing, were given a full opportunity to be heard, to present affirmed testimony and to make submissions. This is my decision in respect of the tenants’ application.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord’s notice to end tenancy complies with the Act.

Preliminary Matter – Severing Unrelated Issues in the Tenants’ Application

Rule 2.3 of the Rules of Procedure, under the Act, states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.”

The tenants’ application contained four matters (3 through 6, inclusive, listed in the Introduction, above) that I find are unrelated to, or not directly related to, the primary issue to be decided: will this tenancy continue? I explained to the parties that I would be dismissing these unrelated claims on the tenants’ application.

As such, pursuant to Rule 2.3 of the Rules of Procedure, I dismiss the tenants’ application in respect of the following, with leave to reapply:

1. an order to suspend or restrict the landlords’ right to enter the rental unit;
2. an order that the landlords comply with the Act, regulation, or the tenancy agreement;
3. a monetary order for damage or compensation; and,
4. a monetary order for the cost of emergency repairs.

#### Preliminary Matter – Landlords’ Late Submission of Evidence

The landlords submitted 55 pages of evidence seven days before the dispute resolution hearing. Most, if not all, of the documentary evidence related to the One Month Notice to End Tenancy for Cause, and as I only heard from the landlord regarding the Two Month Notice, whether the late-submitted evidence was admissible was rendered moot.

That having been said, the landlords submitted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), which was issued on September 6, 2018. However, as the tenants’ application only dealt with the two other notices, I advised the parties that I would not hear evidence, or make any findings, related to that notice.

#### Preliminary Matter – Landlords’ Two Month Notice and One Month Notice

I advised the parties that we had one hour to conduct the hearing. Given that the landlord would need to proceed first, the landlord would need to choose which notice she wished to pursue. I noted that both notices had an end of tenancy date of September 30, 2018. The landlord made submissions regarding the Two Month Notice.

#### Issues to be Decided

1. Are the tenants entitled to an order to cancel the Two Month Notice?
2. If the tenants are not entitled to an order to cancel the Two Month Notice, are the landlords entitled to an order of possession, pursuant to section 55 of the Act?

### Background and Evidence

The agent testified that the landlords issued the Two Month Notice “at the end of July.” I note that the Two Month Notice, which was submitted into evidence by both parties, indicated that it was signed on July 28, 2018, and that it was served by being “left on kitchen counter” on July 30, 2018. The Two Month Notice had an effective end of tenancy date of September 30, 2018.

The agent testified that the landlord’s daughter quit her career in Korea, where she taught ESL, in order to return home to take care of her father, who suffers from dementia. The agent further testified that the daughter has “nowhere to live,” that the house (that is, the rental unit) is intended to be hers, that the daughter is to live in the house and teach English. It is, according to the agent, “imperative” that the daughter live in the house, and that the daughter moved back to assist the family.

The daughter briefly testified, or rather acknowledged, that she was “going to go live there” in the house, and that she was planning to live there. I asked the daughter whether she intended to resume teaching there and she asked me why she had to answer the question. I thanked the witness at that point.

The tenant (“J.”) argued that the issuing of the Two Month Notice was “unreasonable, considering the landlord lives right next door” and that the daughter has been living there, with the landlords, for the past three years. The tenant (“T.”) also testified that the daughter has “lived next door for three years” and that it is “nonsensical that [daughter] would want to move out.” Further, T. disputed that the daughter had “just quit” her job in Korea, and that she questioned the landlords’ intentions in relation to the Two Month Notice. In rebuttal, the agent did not directly dispute the tenants’ testimony regarding the issue of whether the landlords intend for the daughter to move into the rental unit.

While the parties, including the tenants’ witness, engaged in some rather lengthy back-and-forth over the number of occupants in the rental unit and issues surrounding the payment of rent (or the lack thereof), as this hearing was confined to the central issue of the Two Month Notice, I will not address those other matters in this decision.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

In this case, the agent testified that the Two Month Notice was issued under section 49 (1) of the Act, which states that "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit."

The tenants disputed the ground on which the Two Month Notice was issued, submitting that it was "unreasonable," considering that the landlords live right next door and that the daughter has been living there for three years. The tenants further submitted that it was "nonsensical" that the daughter would want to move out of the landlords' resident, and therefore nonsensical that the daughter would intend to occupy the rental unit. The tenants are, in effect, disputing the "good faith" requirement of this section, which is the question to which I must now consider.

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. (See pages 1 and 2 of *Residential Policy Guideline 2. Good Faith Requirement when Ending a Tenancy*.) Moreover, 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. A landlord's intentions might be documented by, for example, a Notice to End Tenancy at another rental unit, or, an agreement for sale and the purchaser's written request for the seller to issue 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. The landlord must 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.

Based on the testimony of the tenants, and coupled with the fact that the One Month

Notice to End Tenancy for Cause was issued five days later, and the ongoing issued between the tenants and the landlords, I find that the issuing of the Two Month Notice to be rather suspect, both on the grounds on which it was issued and the particular timing.

While the agent testified that the daughter quit her job in Korea in order to move back home to assist her family with her father's dementia, according to the tenants' testimony about the daughter having already lived there for three years, I am not persuaded by the agent's argument that it is somehow "imperative" that the daughter now move into the house. In fact, the one person—the landlord's daughter—who was able to provide clear and convincing evidence establishing that the landlord truly intended to do what they said on the Two Month Notice (namely, that the daughter intended in good faith to occupy the rental unit), provided very little useful oral evidence. Indeed, the landlord's daughter was reluctant and resistant in answering my questions regarding her intentions about moving into the rental unit. This reluctance and resistance is even more telling because my questions were simply follow-up questions to information provided by the landlord's agent only moments earlier.

Taking into consideration all the oral testimony and the documentary evidence presented before me, I do not find that the landlords have proven on a balance of probabilities that they intend for their daughter to occupy the rental unit in good faith.

Given the above, I hereby cancel the Two Month Notice, dated and signed July 28, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act

As this hearing only dealt with the Two Month Notice, the One Month Notice to End Tenancy for Cause, dated and signed August 3, 2018, is cancelled and of no force or effect.

I make no findings of fact or law in respect of the 10 Day Notice, and note that in any event, the tenants have confirmed that they are vacating the rental unit on October 15, 2018.

### Conclusion

The Two Month Notice, dated and signed July 28, 2018, is cancelled and of no force or effect. Further, the One Month Notice to End Tenancy for Cause, dated and signed

August 3, 2018, is cancelled and of no force or effect. This tenancy will continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 25, 2018

---

Residential Tenancy Branch