



# 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 an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on December 10, 2018.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice issued on December 10, 2018, be cancelled?

### Background and Evidence

The tenancy began September 2015. Rent in the amount of \$1,112.80.00 was payable on the first of each month. The tenants paid a security deposit of \$500.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on February 28, 2019.

The reason stated in the Notice was that:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Counsel stated that the landlord husband passed away in March of 2016. Counsel for the landlord stated that the landlord has one child that is 27 years of age and wants to use the rental unit for their own space. Filed in evidence is a copy of a letter from the tenant's child

The tenant testified that they live above the landlord's lives; however, they have not been there for four months. The tenant testified that the property has an east wing and a west wing and there is also a place where the landlord's husband was staying until he passed away. The tenant stated that there is another place for the landlord's child to use.

The tenant testified that they don't believe the Notice was issued in good faith based on the following:

1. Most young people move away from the area as there is nothing for them in the area to do;
2. The landlord's child told them in the summer of 2018, that they would never move back; and
3. That the landlord was not happy as they alleged that their garbage smelled causing toxic fumes.

The tenant testified that there also was a previous hearing on November 11, 2018, and that notice to end tenancy was cancelled.

Counsel responded that the only reason the landlord wants the premise is for their child to have their own space. Counsel submits that the landlord's child denies ever saying they would not move back to the property in their letter submitted as evidence.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

The tenants question the “good faith” of the landlord.

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

In this case, there was a previous hearing held on November 28, 2018. The One Month Notice to End Tenancy for Cause was cancelled. However, it was not cancelled on the merits. It was cancelled because it did not comply with section 52 of the Act, as it did not contain a reason. I find this does not support that the landlord is acting dishonestly as the notice if completed properly may have been proven if the merits were heard.

The landlord husband passed away in 2016. The landlord has only child who wants to move back to the community and live in their own space. I find this is reasonable as the child is a young adult of the age of 27 years old.

The letter dated January 16, 2019, from the landlord’s child, reads in part,

“I wish and plan to move into my mother’s lower suite, at .... If and when it because available... I was born in ... and raised in ..., at this house.”

[Reproduced a written]

The evidence of the tenant was that the landlord’s child said they would never move back to the community in the summer 2018; that is denied in the letter dated January 16, 2019.

The evidence of the tenant was that it makes no sense that a young person would want to move back to the area, when all other young adults are leaving. However, I find it is not for me to consider whether this is rationale, as parties have the right to make their own decision based on the own circumstance.

I am satisfied based on the evidence that there is no ulterior motive of the landlord to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement, such as to increase rent. This is simply the landlord wanting the rental space for their only child.

I find the Notice issued on December 10, 2018, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenants’ application to the Notice. The tenancy will end on February 28, 2019, in accordance with the Act.

Since I have dismissed the tenants’ application, I find that the landlord is entitled to an order of possession effective **February 28, 2019, at 1:00 P.M.**, pursuant to section 55 of the Act. This order must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Since the tenants were was not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlord.

### Conclusion

The tenants’ application to cancel the Notice, is dismissed. The landlord is granted an order of possession pursuant.

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: February 6, 2019

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Residential Tenancy Branch