



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HARRN IVESTMENTS INC  
and [tenant name suppress to protect privacy]

## **DECISION**

Dispute Codes CNL-4M, FFT, RP

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 4 Month Notice to End Tenancy for Landlord's Use of Property (the 4 Month Notice) issued by the Landlord pursuant to section 49;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlords 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. The parties confirmed that they had exchanged their documentary evidence for this hearing.

Despite the notice being dated August 26, 2019, the tenant confirmed that he was handed the 4 Month Notice by one of the landlords on April 26, 2019; I accept that it was a simple oversight and I further find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. The parties agreed that the notice was given for the following reason:

- *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property...*

### Issues(s) to be Decided

Should the landlord's 4 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should the landlord be compelled to conduct repairs in the unit or suite?

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

### Background and Evidence

The tenant gave the following testimony that he first took occupancy of this suite “sometime in 2005”. The tenant's current monthly rent is set at \$800.00, payable in advance on the first of each month. The tenant testified that it would put significant financial hardship on him if he has to move out and that his well-being would be compromised. The tenant testified that the caretaker could take other suites in the building but is choosing his because he pays the lowest rent. The tenant wishes to stay.

The representatives for the landlords gave the following testimony. DM testified that the current manager is pregnant and will be going on maternity leave from September 1, 2019 until December 31, 2020. DM testified that she will continue to reside in her current unit on the third floor. DM testified that four or five other units pay about the same rent as the subject tenant. DM testified that the owners wish to have a manager on a first floor corner unit as it would be logistically advantageous in terms of security and oversight as to who is entering the building. DM and CM testified that unwelcomed and “unsavory” individuals have often been entering the complex through the entrance nearest the subject unit. DM testified that having an onsite caretaker in that specific unit will address and improve the security for all tenants and for the fact the present manager is unable to perform her duties past September 1, 2019. PG testified that he has a contract to be the resident caretaker from September 1, 2019 to December 31, 2020. CM testified that upon her return from maternity leave she will continue to need the services of PG. The landlord requests an order of possession.

### 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 the tenant’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 landlords' agent gave clear concise and credible testimony. He provided details as to the logistical benefits for the caretaker to reside in this unit including the security improvement for all tenants and the need for another caretaker as the current one will be going on maternity leave and still residing in her unit during that time. . 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, the order of possession take effect at 1:00 p.m. on August 31, 2019. As I have found that the tenancy must end, I no am not required to address the tenants request for repairs.

### Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenants' application is dismissed in its entirety 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: July 02, 2019

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Residential Tenancy Branch