



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, MT

### Introduction

This hearing dealt with the tenants' application under the *Residential Tenancy Act* (the Act). The tenant applied for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Cause (the 2 Month Notice) pursuant to section 66; and
- 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.

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.

### Preliminary Issue – Extension of Time to File an Application

The tenants advised that they were not seeking more time to file an application but were simply asking for more time to move out as they have been unable to find a suitable home. As they do not require an extension to file an application, I dismiss this portion of their application.

### Issues to Decide

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

### Background and Evidence

The landlords gave the following testimony. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on June 9, 2019 with an effective date of August 31, 2019 as the landlords son wishes to move into this unit and wants the tenant to move out. The landlords testified that their son, his wife his, small child and baby that is due to arrive on September 4, 2019 will be moving into the unit. The landlords testified that if it wasn't for the upcoming arrival of the baby, they would extend the tenancy to help the tenants. The landlords request an order of possession.

The tenants gave the following testimony. The tenants feel the notice is “unfair” feel discriminated against, and doesn’t think the landlord is acting in good faith. The tenants testified that they want to be sure that the landlord is not using the notice to just increase the rent. The tenants testified that they have health issues and would be very detrimental to their health if they have to leave without finding the “right” place.

### 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’ gave clear concise and credible testimony. They provided details as to the logistical and financial benefits for their son and his young growing family to move in. The landlords testified that if the baby wasn’t due to arrive on September 4, 2019 they would have gladly extended the tenancy to assist the tenants. 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 takes effect at 1:00 p.m. on August 31, 2019.

Conclusion

The tenancy is terminated. The landlords are 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: August 13, 2019

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Residential Tenancy Branch