



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, RP, OPL, FF

### Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a Two Month, Notice to End Tenancy for Landlord's Use of Property, (the "Notice" issued on August 1, 2019;
2. To have the landlords make repairs; and
3. To recover the cost of filing the application.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I

find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's' request to set aside the Notice to End Tenancy. The balance of the tenants' application is dismissed, with leave to reapply.

### Issues to be Decided

Should the Notice be cancelled?

Are the landlords entitled to an order of possession?

### Background and Evidence

The tenancy began in 2015 and was a 5 ½ fixed term tenancy that was to expire on August 15, 2019. Rent in the amount of \$1,775.00 was payable on the first of each month. The tenants paid a security deposit of \$900.00. The security deposit was collected based on the rent at the start of the tenancy of tenancy, which was \$1,800.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on October 31, 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)

The landlord testified that they gave the tenants notice back in May 2019, that they were not going to renew the lease that expired on August 15, 2019. The landlord stated that they had planned to use their residence to help their family with sick grandchildren, who have medical issues.

The landlord testified that that because the tenants did not vacate, they have to travel back and forth on the ferry on a weekly basis, which is not what they had planned. The landlord stated that they need to obtain their home back.

The male tenant testified that it is unfortunate that they had not talked about the issue and feel it was a miscommunication. The tenant stated that they wished that they had an open conversation and worked out an agreement to a move-out dated. The tenant stated that they understand the position the landlords are in.

The female tenant testified that they did receive an email from the landlord in May 2019, which indicated that a family member was moving in; however, the email did not indicate it was the actual landlord. The tenant stated that they tried to communicate with the landlord; however, they did not respond to their emails. The tenant stated that they believe the landlords may want to fixup the rental unit and increase the rent.

### 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.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have provided sufficient evidence to show 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)

In this case, I accept the landlords' evidence that they have sick grandchildren whom have medical issues and want to occupy the premise for their own use to help their family with the children. This is reasonable under the circumstance.

While I accept the male tenant's testimony that this may have been resolved, if there was more open communication between the parties; however, often people do not want to disclose family issues to an outside party.

The female tenant alleged that they believe the landlords may be simply wanting to fix up the premise and obtain a higher rent; however, there is no evidence to support that. The tenants were informed in May 2019, that their lease was not going to be renewed in August 2019, and that the premise was going to be used for landlord's use of property.

There was no supporting evidence presented that the landlords had any ulterior motive for ending the tenancy. I do not accept that the landlords' motive is to increase the rent. This is not supported, as the tenants have not received any rent increase during their 5 ½ year tenancy; however, their rent was reduced during their tenancy. This does not

lead me to believe the landlords have an ulterior motive of money. I find it more likely than not that the landlords truly intend to use the premise for their own use and to assist their family with their grandchildren's medical issues.

I find the Notice issued on August 1, 2019, has been proven by the landlords and is valid and enforceable.

Therefore, I dismiss the tenants' application to cancel the Notice issued on August 1, 2019. Since the landlords were not agreeable to extend the effective date of the Notice, I find the tenancy will legally end on October 31, 2019, in accordance with the Act.

Since I have dismissed the tenant's' application, I find that the landlords are is entitled to an order of possession effective October 31, 2019, **at 1:00 P.M.** 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 where was not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlords.

Since the landlords have been successful with their application, I find the landlords are entitled to recover the cost of filing their application from the tenants. Therefore, I grant the landlords a monetary order in the amount of **\$100.00** and the landlords are authorized to deduct that amount from the tenants' security deposit if full satisfaction of this award.

### Conclusion

The tenants' application to cancel the Notice, issued on August 1, 2019, is dismissed.

The landlords are granted an order of possession. I grant the landlords a monetary order for the cost of filing their application and the landlords are authorized to deduct that amount from the tenant's' security deposit in full satisfaction of this award.

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: October 22, 2019

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Residential Tenancy Branch