



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on October 7, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated September 30, 2019; and
- an order granting the return of the filing fee.

The Tenants, the Landlord, and the Landlord's son H.C. attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenants testified that they served their Application and documentary evidence package to the Landlord by registered mail on October 18, 2019. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application 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 has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated September 30, 2019, pursuant to Section 49 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 3, 2016. Currently, the Tenants pay rent in the amount of \$960.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$500.00 which the Landlord continues to hold. The tenancy is still ongoing.

The Landlord testified that she served the Tenants in person with a Two Month Notice to End Tenancy dated September 30, 2019 with an effective vacancy date of November 30, 2019. The Tenant confirmed having received the Two Month Notice on September 30, 2019. The Landlord's reason for ending the tenancy on the Two Month Notice is;

*"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 stated that she currently owns the rental property and rents out the basement to the Tenants. The Landlord stated that she wishes to end the tenancy as her adult son would like to occupy the rental unit with his girlfriend. The Landlord's son H.C. confirmed the Landlord's intent in serving the Two Month Notice. H.C. stated that he currently works with his family and that he had intended to move out of the family home until his mother insisted that he live in the basement of the family home. H.C. stated that he plans to reside in the rental unit with his girlfriend as soon as they have vacant possession of the rental unit as he would like to stay close to his family.

In response, the Tenants stated that they were unaware that the Landlord's son intended on occupying the rental unit. Furthermore, the Tenants stated that they are both attending school currently and that they have exams to complete over the next few months. As such, the Tenants stated that it is a bad time for them to have to move.

Lastly, the Tenants stated that the Landlord has been trying to increase their rent beyond the allowable amount for some time. The Tenants provided documentary evidence of a conversation regarding rent increase between the Tenants and the Landlord.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord served the Tenants in person with the Two Month Notice on September 30, 2019, with an effective vacancy date of November 30, 2019. The Tenant confirmed having received the notice on September 30, 2019. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenants received the Two Month Notice on September 30, 2019 and filed their Application on October 7, 2019. Therefore, the Tenants are within the 15 day time limit under the Act.

In this case, the Landlord stated that her son intends on moving into the rental unit with his girlfriend. As such, the Landlord is seeking to end the Tenancy to obtain vacant possession for this purpose. The Landlord's son, H.E. further confirmed that he will be moving into the rental unit once it becomes vacant.

The Tenants stated that they were unaware that the Landlord's son intended to occupy the rental unit and that it is a bad time for the Tenants to be moving, given their academic obligations. The Tenants also indicated that the Landlord has been trying to increase their rent beyond the allowable amount. The Tenants provided documentary evidence of a conversation between the parties regarding the rent increase which took place in March of 2018. As such, I find that Tenants have provided insufficient evidence that to demonstrate that the Two Month Notice dated September 30, 2019 was served in bad faith.

In light of the above, I dismiss the Tenants' Application to cancel the Two Month Notice dated September 30, 2019, without leave to reapply. The Landlords and the Tenant should be aware that if the Landlords fail to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenants the equivalent of 12 months' rent as a penalty.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective on November

30, 2019 at 1:00PM, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

As the Tenants were not successful with their Application the Tenants are not entitled to recover the filing fee from the Landlord.

### Conclusion

The Tenants' Application seeking cancellation of the Two Month Notice dated September 30, 2019, is dismissed without leave to reapply. The Landlord is granted an order of possession effective on November 30, 2019 at 1:00PM. The order should be served to the Tenants as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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: November 14, 2019

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Residential Tenancy Branch