



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, DRI, OLC, MNDC, OPL, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (*"the Act"*). The matter was set for a conference call hearing.

On October 29, 2019, the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property. The Tenants also applied to dispute a rent increase; for an order that the Landlord comply with the *Act*; and for money owed or compensation for damage or loss.

On November 19, 2019, the Landlords applied requesting an order of possession based on the issuance of a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenants and Landlords attended the hearings. The Tenants were assisted by an advocate. The Landlords were assisted by their daughter acting as their agent. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing. The parties confirmed that they have exchanged the documentary evidence that I have before 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.

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the Two Month Notice to End Tenancy for Landlord's Use of Property. The Tenants monetary claims are dismissed with leave to reapply.

At the conclusion of the first hearing on December 19, 2019, I made a finding that if the Landlord wants to end the tenancy due to major renovations, the Landlord must issue the Tenants a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit. I verbally informed the parties that the Two Month Notice served to the Tenants will be set aside, and the tenancy will continue until ended in accordance with the Act.

After further deliberation immediately after the hearing, it became apparent to me that the Landlords are not intending to perform a major renovation of the Tenants' rental unit. The Landlords are intending to renovate their own unit located above the Tenants unit and they intend to move into the Tenants' unit. In this circumstance, it appears that the Landlord properly issued a Two Month Notice to End Tenancy for Landlord's Use of Property.

The hearing was reconvened to hear the merits of the Landlords Two Month Notice to End Tenancy for Landlord's Use of Property dated October 25, 2019.

#### Issue to be Decided

- Should the tenancy end based on the Two Month Notice to End Tenancy for Landlord's Use of Property?

#### Background and Evidence

The Landlords and Tenants testified that the tenancy began on March 1, 2013 and is currently on a month to month basis. Rent in the amount of \$973.75 is to be paid to the Landlords by the first day of each month. The Tenants paid the Landlords a security deposit in the amount of \$350.00.

The Landlords issued the Tenants a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 25, 2019 ("the Two Month Notice"). The reason for ending the tenancy within the notice is:

*The rental unit will be occupied by the Landlord or the Landlord's close family member.*

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is December 31, 2019.

The Two Month Notice provides information for tenants who receive the Notice. The Notice provides that a tenant has the right to dispute the Notice within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the Two Month Notice on October 29, 2019, within the required time period.

The Landlords' agent and interpreter is the Landlords daughter and she provided testimony on why the notice to end tenancy was issued. She testified that the Landlords are planning a major renovation of their own home.

The Landlords agent testified that the house is 30 years old and they will be demolishing the kitchen and washrooms and replacing carpeting and replacement of the floor sheeting. The Landlord's agent testified that the floors upstairs are squeaky, and the Tenants living below have complained about the squeaky flooring for the past couple years. The Landlord provided a copy of a letters they received from the Tenants complaining about noise coming from the squeaky and damaged floor in the above kitchen area.

The Landlords' agent testified that the Landlords will be living in the rental suite during the renovations. She testified that it will take a couple of months to complete all the renovations/repairs and that they will be living in the rental unit for a six-month period. She testified that after six months, the Landlords plan to live in the upstairs unit and re-rent the lower suite.

In response to the Landlord's testimony, the Tenants' advocate submitted that the Landlords issued the Two Month Notice in bad faith as retaliation against the Tenants for not accepting illegal rent increases and other unconscionable terms of tenancy that breach the Act. The Tenants' advocate submitted that the Landlord threatened to sell the rental property and threatened eviction if the illegal rent increase was not agreed to by the Tenants. She submitted that the Tenants were scared that the Landlord would evict them.

The Tenants advocate submitted that the Landlords attempted to illegally increase the rent in July 2018. The Tenants provided The Tenants advocate provided copies of other documents as follows:

- Tenancy agreement signed and dated July 9, 2017, which provides that a rent increase begins on October 1, 2017 and the Tenants are to pay \$726.00 per month.
- A copy of a letter the Tenants received from the Landlord dated July 24, 2018 where the Landlord states that due to cost increases the rent will be increased from \$726.00 per month to \$1,100.00 per month.
- A tenancy agreement signed and dated August 6, 2018 which provides that a rent increase begins on October 1, 2018 and the Tenants are to pay \$950.00 per month.
- An unsigned tenancy agreement which provides that as of October 1, 2019, the parties agree to a new rental amount of \$973.75 per month. The document also provides that the Landlords want an additional security deposit of \$136.87.

- A letter dated July 15, 2019 from the Tenants advocate to the Landlords indicating that the terms in the Landlords proposed tenancy agreement document contain unconscionable terms that are in contravention of the Act. The letter provides an explanation of the legislative requirements for increasing the rent.
- A copy of a Notice of Rent Increase dated July 26, 2019 signed by the Landlord, which provides the current rent of \$950.00 is increasing to \$973.75 monthly starting on November 1, 2019.

The Landlords issued the Two Month Notice to End Tenancy for Landlord's Use of Property dated October 25, 2019, prior to the effective date of the rent increase.

The Tenants' advocate made submissions regarding the scope of the renovations. She submitted that the renovations are cosmetic and not substantial and could be completed in two to three weeks. She submitted that the tenancy should not end due to the Landlords' renovation plans.

The Tenants advocate suggested that the Tenants would be willing to share their kitchen and bathroom with the Landlords during the renovations. The Landlords advocate also suggested that the parties could settle this dispute by agreement that the Tenants will move back into the rental unit when the renovation are complete.

The Landlords agent responded that the Tenants have harassed the Landlords and the Landlords are not willing to share the kitchen and bathroom. The Landlords' agent submitted that after the renovations are complete, they are open to having discussions about the Tenants moving back into the unit.

The Tenants advocate took exception to the Landlords agent use of the word harassed and that the Tenants have harassed the Landlords.

The Tenants advocate submitted that the Tenants have paid the rent for November, December, and January, and the Landlord accepted the rent unconditionally without the mention of use and occupancy only. The Tenants advocate submitted that because the Landlord accepted rent without mention of use and occupancy, the tenancy should continue.

In the Landlords' documentary evidence, the Landlord submitted that from March 2013 to October 2017 the Tenants rent was \$700.00 per month. In July 2017 the Landlords increased the rent to \$726.00 which the Tenants willingly accepted.

In the Landlords' documentary evidence, the Landlord submitted that in July 2018 the Tenants requested a letter from the Landlords showing a higher rent quote so they could take it to the Social Services and ask for a subsidy/grant.

The Landlord submitted that in August 2018 the Tenant negotiated \$950.00 rent increase. The Landlord submits that they all agreed to this amount with no qualms and both parties signed it.

The Landlords submitted that on July 1, 2019, they spoke to the Tenant about increasing the rent and suggested the amount of \$1,150.00. In July 2019 they were informed by the Tenants' advocate about the maximum allowable rent increase. The Landlord submitted that they were not aware of this law and that they would have followed this maximum allowable rent increase each year.

The Landlords agent stated that the decision to end the tenancy is not retaliatory.

### Analysis

Residential Tenancy Policy Guideline # 37 Rent Increases provides the following information:

*A tenant's rent cannot be increased unless the tenant has been given proper notice in the approved form at least three months before the increase is to take effect. The tenant's rent can only be increased once every 12 months.*

*A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.*

*The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant.*

*Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.*

Section 49 (3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to

move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

*“Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.*

...

*If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.*

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

The Tenants’ advocate pointed out that the renovation of the Landlord’s unit is cosmetic; not substantial; and could be completed in two to three weeks. While I accept that these submissions may be accurate, I find that the extent of any renovations to the Landlords’ unit is not a consideration for a notice to end tenancy issued under section 49(3) of the Act. The advocates submissions on these considerations apply to when a Landlord wants to renovate or repair a rental unit occupied by a Tenant, and a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit is issued.

I also find that the submission made by the Tenants’ advocate regarding the Landlords acceptance of rent without including the words “use and occupancy only” is not relevant to whether or not the tenancy will continue. A Tenant is required to pay the rent when it is due under the tenancy agreement. The tenancy continues until the hearing and a decision is made. I find that Landlords acceptance of the rent owing under the tenancy agreement does not create a new tenancy and render the Two Month Notice invalid. The Landlord is pursuing an order of possession.

I find that the Landlords issued a Two Month Notice to End Tenancy for Landlord’s Use of Property dated October 25, 2019. The Two Month Notice indicates the rental unit will be occupied by the Landlord or the Landlord’s spouse or a close family member of the Landlord or the Landlord’s spouse.

I accept the Landlords’ testimony that the Landlords intend to move into and occupy the rental unit. I find that the Two Month Notice was issued in compliance with section 49(3) of the Act.

I find that a property owner has the right to end a tenancy if they intend in good faith to occupy the rental unit. I have turned my mind to the policy guideline on whether or not the Landlord has an ulterior motive to end the tenancy. I have considered that “good faith” means there is no

intent to defraud, act dishonestly, or avoid obligations under the legislation or the tenancy agreement.

I find that the Landlords incorrectly attempted to increase the rent on three occasions from 2018 to 2019. I find that the tenancy agreement signed and dated by the parties on August 6, 2018 which provides that the Tenants are to pay \$950.00 per month was not a legal rent increase because the written agreement does not provide the percentage of the increase and did not include issuance of a notice of rent increase. The amounts of the proposed rent increases in 2018 were higher than the 4% amount permitted under the legislation for that year and the Landlords did not issue proper Notices of Rent Increase.

I have considered the Landlords written submission that they were not aware of the law around rent increases and that they would have followed the maximum allowable rent increase each year. I have considered this submission against the Landlords' documentary evidence that in July 2017 the Landlords increased the rent from \$700.00 to \$726.00. I note that in 2017, the legal amount of a rent increase was 3.7%. I find that the Landlord was permitted to increase the rent by \$25.90 and the Landlord increased the Tenants rent by \$26.00.

I find that the Landlords recent attempts to increase the rent to amounts above what is permitted by the legislation suggests that the Landlord was trying to avoid obligations under the Act and tenancy agreement regarding rent increases. It appears to me that the Landlord was aware in 2017 that there are limits to the amount of rent increases as evidenced by the amount the rent increased in 2017.

I am mindful that neither the Landlords or the Landlords' agent provided any response to the testimony that the Landlords told the Tenants that the Landlord would issue an eviction notice to them if the illegal rent increases were not agreed to by the Tenants.

I am mindful that the Two Month Notice was issued only a couple months after the Tenants' advocate sent them a letter informing them that their intention to raise the rent was in contravention of the Act. I also note that the Landlord issued the Two Month Notice prior to the effective date of the notice of rent increase. It appears to me that when the Landlords were not successful with raising the monthly rent to the amount they were seeking, they decided to issue the notice to end tenancy under section 49(3) of the Act.

The Landlords' agent testified that the renovations will take a couple months and the Landlord plans to re-rent the unit after six months. I note the Landlords were not interested into entering into an arrangement to share the Tenants kitchen and bathroom during renovations, and the Landlords were not interested in an agreement that the Tenants could move back into the rental unit after completion of the renovations. I note that there is no requirement under the Act or regulation for the Landlord to agree to these proposals.

There was insufficient evidence provided to support the statement of the Landlords agent that the Tenants have harassed the Landlord. It appears to me that the Tenants are simply exercising their rights under the Act. Considering the Landlord has attempted to illegally increase the monthly rent since 2018, and since the Landlord does not want to agree to permit the Tenants to move back into the unit after the renovations upstairs are complete, I find that it is reasonable to find that the Landlords intend to rent the rental unit out a higher monthly rent than they are currently receiving.

I find that it is more likely than not that the Landlords have an ulterior motive to end the tenancy so that they can re-rent the unit after six months for a higher monthly amount.

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated October 25, 2019 is granted. The Two Month Notice is set aside.

The tenancy will continue until ended in accordance with the legislation.

#### Conclusion

I find that it is more likely than not that the Landlord is trying to avoid obligations under the Act and tenancy agreement regarding rent increases and they have an ulterior motive to end the tenancy so that they can re-rent the unit after six months for a higher monthly amount.

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated October 25, 2019, is granted. The Two Month Notice is set aside.

The tenancy will continue until ended in accordance with the legislation.

The Tenants have leave to reapply for the monetary claims that were severed from their application.

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: January 16, 2019

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Residential Tenancy Branch