



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on February 28, 2020, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave 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.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?

### Background and Evidence

The landlord and their spouse entered into a supreme court order granting the landlord exclusive possession of this specific property which was effective February 4, 2020. The female tenant is the landlord’s child/stepchild.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on April 30, 2020.

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 tenants submit they are not disputing the form or content of the Notice. The tenants submit that they have a verbal 10-year fixed term tenancy and the landlord must comply with that agreement.

Counsel submits that there is no such thing as a verbal 10-year fixed term agreement and there was no written tenancy agreement as this was a family relationship which changed when the owners separated, and the assets were disposed of by the court order.

Counsel submits that this property is a farm and has been in the family home of the landlord since he was born. Counsel submits that the landlord has multiple sclerosis and is in a wheel chair and is currently living in a care home. Counsel submits that the cost of the landlord living in the care home is over \$22,000.00 each year and that the landlord does not want to stay in the care home any longer due to the pandemic and wants to go home.

Counsel submits that they request the Order of possession be issued pursuant to section 56 of the Act, due to the exceptional circumstances of the landlord. Counsel submits that the *Ministerial Order M089* issued March 30, 2020, Part 2 4 (1) allows for such an order.

The tenants agreed that if the Notice is valid, and if they are given to May 31, 2020 to vacate the premise, then they agree that the order of possession can be given pursuant to section 56 of the Act. The tenants fully understand that under section 56 of the Act the order may be enforced even if the state of emergency continues after May 31, 2020.

Counsel for the landlord agrees with the extension, if the Notice is found valid.

### Analysis

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

**12** The standard terms are terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

In this case, the tenants are not disputing the form or content of the Notice. The issue I must decide is whether the effective date in the Notice is earlier than the Act allows, as a fixed term cannot be ended earlier than the date specified in the tenancy agreement.

In this case the landlords, who are the parents of the female tenant entered into a verbal agreement to rent the premise. I find the parties did not enter into a fix term tenancy as a fixed term tenancy agreement must be in writing and must specify the date it ends. I find this is a month to month tenancy. Therefore, I find the effective vacancy date of April 30, 2020, in the Notice valid.

As the tenants were not successful with their application, I decline to award them the cost of the filing fee.

As I have dismissed the tenants' application, I find the landlord is entitled to an order of possession pursuant to section 55 of the Act.

However, the parties made the following settlement agreement at the hearing, which I have recorded pursuant to section 63 of the Act.

- The parties agreed that the effective vacancy date of the Notice be extended to May 31, 2020 at 1:00pm; and
- The parties agreed that the landlord is entitled to an Order of Possession pursuant to section 56 of the Act, which means it may be enforced even if the state of emergency has been extended. This is due to the landlord's exceptional circumstances where it would be unfair for the landlord to be forced to remain in a care home.

**Conclusion**

The tenants' application to cancel the Notice, is dismissed. The landlord is granted an order of possession.

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: April 27, 2020

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Residential Tenancy Branch