



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL, FFT, OLC, DRI**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Notice of Rent Increase pursuant to section 43;
- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order to dispute a rent increase pursuant to section 41;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The landlord did not raise any issues regarding the service of evidence.

The parties agreed the landlord submitted evidence and provided copies to the tenant the day before the hearing. This evidence, as it was not submitted and served as required under the Act, will not be considered in my Decision.

I have only considered and referenced in the Decision relevant evidence submitted and in compliance with the Rules of Procedure to which I was referred.

### *Preliminary Issue*

At the commencement of the hearing, I advised the parties that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's Notice. I find that the tenant's primary application pertains to disputing a notice to end tenancy; therefore, I find that the additional claims are not related to whether the tenancy continues.

Thus, all the tenant's claims, except for the tenant's application to dispute the landlord's Notice, are dismissed. I make no findings with respect to these claims. I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

### Issue(s) to be Decided

Is the tenant entitled to:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

### Background and Evidence

The parties agreed as follows. The tenancy began in October 2013. The unit is a house and the landlord lives nearby. The parties entered into a tenancy agreement which was not submitted as evidence. Rent is \$800.00 monthly payable on the first of the month. The tenant paid a security deposit of \$400.00 which the landlord holds.

The tenant testified as follows. The parties were close friends as well as neighbours. They had a verbal agreement that the tenant would purchase the house in the fall of 2020. However, the relationship between the parties suddenly changed in early 2020. The tenant testified that the landlord requested that rent be increased by 50% or more.

The tenant said the landlord informed her that either she agreed to pay the increased rent, or she, the landlord, would evict the tenant. The tenant testified that she cannot afford the increase in rent; as well, she cares for an adult with Alzheimer's and does not want to move.

The tenant testified the excellent relationship between the parties swiftly changed. The tenant refused to pay the requested rent increase.

The landlord denied the tenant's version. The landlord stated that the collapse of the arrangement of purchase and sale was the tenant's fault although the landlord was unclear regarding the reasons for this statement. The landlord denied asking for more rent. The parties agreed the landlord did not issue a notice to increase rent in the RTB form.

The landlord's version of events is that she decided she wanted to live in the unit. Accordingly, she sought and obtained mortgage approval based on owner-occupancy.

The parties agreed the landlord served the Two Month Notice on the tenant on July 3, 2020 stating the landlord intended to occupy the unit. The effective date was September 30, 2020. The tenant filed to dispute the Notice on July 9, 2020.

The tenant requested the Notice be cancelled as the landlord did not issue it in "good faith" but in order to obtain more rent.

The landlord asserted she genuinely wanted to move in to the house.

### Analysis

To evict a tenant for landlord's use of the property, the landlord has the burden of proving the reasons on the Notice. The parties had sharply contrasting narratives which were provided in detail in the 47-minute hearing. While I have turned my mind to the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

The tenant raised the issue of the intention of the landlord. The tenant questioned whether the landlord's plan to occupy the unit was genuine. The tenant expressed a lack of confidence in the landlord's stated plan that the purpose of the Notice was to allow the landlord to occupy the unit. The tenant argues the landlord issued the notice in

retaliation for the tenant's refusal to pay 50% or more rent and the collapse of the purchase and sale agreement for which the landlord believed the tenant was responsible.

The tenant asserts that the landlord has not issued the Two Month Notice in good faith but instead simply wants to get rid of the tenant, once a close friend, and now estranged. The motive, the tenant asserts, is retaliation and "greed".

*The Residential Tenancy Branch Policy Guideline # 2 states 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 Two Month Notice.*

This Guideline reads in part as follows:

*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 tenant has raised the good faith intention of the landlord which I find has some basis. In assessing the tenant's credibility, I found the tenant persuasive, matter-of-fact and believable. Where the parties' testimony differs, I give greater weight to the tenant's version of events.

While the landlord denied a discussion about a rent increase, I accept the tenant's testimony that the parties did discuss the landlord's request for a rent increase. The timing of the Two Month Notice so quickly after a discussion about increasing the rent, raises doubts about the bona fide intentions of the landlord.

While the landlord provided some explanation about the reason for issuing the Notice, I find that I am not wholly convinced that there are no other factors which have given rise

to the Notice. The landlord did not provide any supporting evidence of her plans to occupy the unit other than a short email from a mortgage broker saying she had obtained owner-occupancy mortgage approval. The landlord provided no evidence that this was the only means by which financing could be obtained.

While the landlord may intend to use the rental unit for the purposes stated on the Two Month Notice, there may be additional reasons fueling the issuance of the Notice. Therefore, I find that the good faith argument has merit. I find there are reasonable doubts about the intention of the landlord to occupy the unit at the end this tenancy.

Therefore, the Two Month Notice is cancelled. This tenancy will continue until it is ended in accordance with the *Act*.

As the tenant has been successful in this application, the tenant is entitled to be reimbursed for the filing fee. Pursuant to section 72, the tenant is authorized to deduct this amount from rent payable in the amount of \$100.00 for one month only.

### Conclusion

The tenant's application to cancel the Two Month Notice is allowed. The Two Month Notice has no continuing force or effect. This tenancy will continue until ended according to the *Act*.

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 17, 2020

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Residential Tenancy Branch