



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPR, MNRL-S, OPL, CNL, LRE, AAT, OLC, CNR, RP, RR

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords’ 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”), pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant’s guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The parties confirmed that they had exchanged their documentary evidence.

#### Preliminary Issue – Tenant amended application

At the outset of the hearing the tenant advised that he was not interested in pursuing any of his application save and except, “keep my housing”, accordingly; the tenants application is dismissed in its entirety except for his request to cancel the notices to end the tenancy.

#### Issue(s) to be Decided

Should the 10 Day Notice or the Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the deposit in partial satisfaction of the monetary order?

Is the landlord entitled to the recovery of the filing fee for this application from the tenant?

#### Background and Evidence

The landlord gave the following testimony. The landlord testified that on September 14, 2020 a Two Month Notice to End Tenancy for Landlords Use of Property was served on the tenant with an effective date of November 30, 2020 for the purposes of the landlord’s mother to move in. The landlord testified his mother is the owner of the home and fully intends to move into the space to allow her to live and work. The landlord testified that his mother does artwork as part of her therapy as a counsellor and has lost the use of the space she had at the local church due to the pandemic. The landlord testified that she requires more space to accommodate that. The landlord testified that the tenant did not pay the rent on October 1, 2020 and a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was issued on October 30, 2020. The landlord testified that the tenant didn’t pay the rent for November either and seeks an order of possession on the basis of either or both notices.

The tenant gave the following testimony. The tenant testified that he e-transferred the rent on “disability day” for both October and November. The tenant testified that the landlord already occupies space on the upper floor and won’t need his space. The

tenant testified that he does care about all the other issues, he just wants to have housing.

### Analysis

The relationship between the parties is an acrimonious one. The tenant was cautioned numerous times about interrupting the landlord and yelling profanities at him. During the hearing the tenant stated that the landlord and I were planning on “screwing him”. Despite my attempts to reassure the tenant that the landlord and I were not colluding against him, the tenant became more upset. At the end of the conference, the tenant was yelling profanities so loudly that he did not hear that the conference was over and the information I was providing to the parties about receiving their decision.

I first address the landlords 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 30, 2020. The landlord did not provide **sufficient supporting evidence** to reflect the amount of rent due, accordingly; I cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, it is of no effect or force. As there is insufficient evidence in regard to the actual rental amount, due date, amount of deposit and months owing, I dismiss the landlords request for a monetary order with leave to reapply.

The landlord also issued a Two Month Notice to End Tenancy for Landlords Use of Property on September 14, 2020. The tenant testified all cares about is “to remain housed” and that the landlord is not going to move in as she already lives upstairs. The landlord testified that his mother does live upstairs but wishes to expand her living space. The landlord testified that his mother has used the facilities at the local church to follow her passion of art for the past ten years but due to the pandemic, that space has been closed. The landlord testified that his mother desperately wants to live on her own with enough space to continue with her art. The landlord testified that his mother will live and work in the space as she is a counsellor and incorporates art as part of her therapy for clients.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the “good faith requirement” as follows.

*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 Notice to End the Tenancy.*

*This might be documented through: a Notice to End Tenancy at another rental unit; an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.*

*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 landlord gave clear concise and credible testimony. He provided details as to the logistical and financial benefits for his mother to move into the subject unit. The landlord advised that despite what the tenant alleges, his mother has owned this home for many years and wishes to continue living in it and continue with her artwork. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The Notice remains in full effect and force. Both of the tenant's applications are dismissed in their entirety. As the landlord has been only partially successful in their application, I decline to award the recovery of the filing fee, they must bear that cost.

### Conclusion

The landlord is granted an order of possession, the tenancy is terminated. The landlords monetary claim is dismissed with leave to reapply.

Both of the tenant's applications are dismissed in their entirety without leave to reapply.

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 13, 2020

---

Residential Tenancy Branch