



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, CNC, FFT

### Introduction

This hearing was convened in response to an application and an amended application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling two notices to end tenancy - Sections 47 and 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Are either of the notices to end tenancy valid?

Are the Tenants entitled to the cancellation of either of the notices to end tenancy?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: the tenancy under written agreement started on August 1, 2014. At the outset of the tenancy the Landlord collected \$325.00 as a security deposit and \$325.00 as a pet deposit. The Landlords purchased the rental unit in November 2017. Rent of \$684.29 is payable on the first day of each month. The Tenant’s pay an additional monthly amount of \$23.00 for a storage shed. The Landlord served the Tenants with a two month notice to end tenancy for landlord’s use dated October 13, 2020 (the “Landlord’s Use Notice”) and with a one month notice to end

tenancy for cause (the "Cause Notice") dated November 19, 2020. The Landlord's Use Notice has an effective date of January 1, 2021 with the stated reason being that the unit will be occupied by the Landlord or the Landlord's spouse. The Cause Notice has an effective date of January 1, 2021 and the reasons stated for the Notice is that the Tenant or a person permitted on the property by the Tennant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk. The Cause Notice sets out the details for the reasons.

The Landlord states that the Tenants have harassed and intimidated other tenants in relation to the collection of evidence to dispute the Landlord's Use Notice. The Landlord states that it does not have any supporting evidence from any of these tenants about the harassment or intimidation. The Tenant states that they have not harassed or intimidated any other tenants and that most of the other tenants are friends who socialize with the Tenants.

The Tenant states that the Landlords have an ulterior motive for ending the tenancy as the Parties have not had a good relationship since the purchase of the property. The Tenant states that the Landlord previously lost an attempt to end the tenancy in May 2019. The Tenants state that the Landlords are overbearing micro-managers and have given the Tenants over 70 notices and complaints since they purchased the property.

The Tenant states that it fully believes that Landlord JH will occupy the unit. The Tenant states that the Landlord could have ended other tenancies and that the Tenants' tenancy is the longest from among the other tenants. The Tenant states that the Landlord tried to get themselves and other tenants to move out voluntarily but that all refused. The Tenant argues that the Landlord cannot now evict them. The Tenant states that the Landlord also only intends to occupy the unit for 6 months and then re-rent the unit. The Tenant states that the market would support double the rental income for its unit.

The Tenant states that the Landlord's evidence indicates that Landlord JH intends to have its two children reside at the unit and that this would be contrary to the Landlord's own position with other tenants since they have taken over that the rental units do not allow children and that the units are all considered to be restricted to over 55 year occupants. The Tenant provides a copy of a petition signed by other tenants indicating that they are not in favour of having children in the rental units and were told that they could not have children in the rental units.

The Landlord states that Landlord JH will occupy the unit. The Landlord states that they decided to separate in September 2020 and that Landlord JH has seen a lawyer and paid a retainer fee on November 4, 2020 to initiate a legal separation. The Landlord provides copies of email communications between Landlord JH and its lawyer as supporting evidence of the separation.

The Landlord states that while they own 10 rental units over 3 close properties, Landlord JH wanted an end unit as these would be the quietest. The Landlord states that of the 6 end units, two are on fixed terms restricting the Landlord from ending their tenancies and two units have a shared yard that is not suitable for their children with autism. The Landlord states that it just arbitrarily chose the Tenants' end unit over the other end unit and that if they are not successful with the end of this tenancy, they will seek to end the tenancy of the other end unit. The Landlord states that they did not chose other properties that were not next door to the Landlord's current residence as they wanted the children to be close and the Tenants' unit is next door to the Landlord's residence.

The Landlord states that Landlord JH is currently staying with the Landlord until the unit becomes available, that the Landlord is very stressed out with the situation and that the Landlord is anxious for Landlord JH to move out and into the unit. The Landlord states that the stress level is so high with this situation along with having a father with

dementia living with the Landlord and the presence of the pandemic that the Landlord may have to remove itself to a temporary shelter.

The Landlord states that they have received complaints from other tenants about the Tenants and that they are not ending the tenancy because of difficulties between the Parties. The Landlord argues that the Tenants' evidence of the petition is not relevant to whether the Landlord intends to occupy the unit and is only about tenant complaints about how bad the Landlords are. The Landlord states that they have never restricted children from occupying the unit but have restricted the number of occupants in the units.

The Landlord states that in trying to be fair to their tenants and prior to giving the Tenants the Landlord's Use Notice, they sent a letter to all tenants asking if any of them were planning on moving out of their units.

The Tenant states that the Landlord entered into fixed term leases with at least one other tenant in June 2020 and questions why they would do that if the Landlord's were having marital problems. The Tenant states that the Landlords also own a home in a nearby city and that if their situation is so much trouble, they could use that home.

The Landlord states that when they entered into fixed term tenancies in March and June 2020 they were not in the process of a separation and that the decision to separate was made in September 2020. The Landlord states that with the current pandemic rentals are not as available, they do not have the funds to purchase another property and that the home in the nearby city is currently rented on a long-term lease. The Landlord argues that they should not have to pay rent when they own properties that can be lived in. The Landlord states that they chose the Tenants' unit for economic reasons and for Landlord JH to be close to the family home for their children.

The Landlord states that rent has been paid for January 2021 and that if either the notices are found to be valid, they would request an order of possession for January 31, 2021. The Tenants state that they have not prepared for an outcome where either of the notices are found to be valid, have not looked for alternate housing and would need at least to the end of February 2021 to find another place and relocate.

### Analysis

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. Policy guideline 2A sets out that good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It also means, inter alia, that they do not have an ulterior motive for ending the tenancy and that if there are comparable rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith. Given the undisputed evidence of a previous failed attempt by the Landlords to end their tenancy and the undisputed evidence of significant number of notices and complaints sent to the Tenants, I find on a balance of probabilities that the relationship between the Landlord and Tenants was not good prior to the provision of the Landlord's Use Notice. While it can be accepted that Landlord JH does intend to occupy a rental unit, given the bad relations between the Parties, considering that the Landlords gave the Tenants another baseless one month notice to end the tenancy for cause after the Tenants' disputed the Landlord's Use Notice, and considering the Landlord's evidence that another comparable unit suitable for their needs is available, I find on a balance of probabilities that the Landlord did not arbitrarily choose to end the Tenants' tenancy and that the Landlord acted to end their particular tenancy for ulterior motives. The Landlord's Use Notice is therefore not valid. The Tenants are entitled to its cancellation and the tenancy continues.

As the Tenants have been successful with their claims, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Cause Notice and the Landlord's Use Notice are cancelled, and the tenancy continues.

I grant the Tenants an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: January 20, 2021

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Residential Tenancy Branch