



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlords Use of Property (the 2 Month Notice) pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of each others documentary evidence.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlords' agent gave the following testimony. The tenancy began on or about October 1, 2009. Rent in the amount of \$500.00 is payable in advance on the first day of each month. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on January 17, 2021 with an effective date of March 31, 2021 for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The landlord testified that his son will be moving into the subject unit. The landlord testified that he would prefer to have his son live with him and be immersed in their culture from India, but he also respects the fact that they live in Canada and his son wishes to be independent. The landlord testified that he disputes the tenants claim that the unit is uninhabitable. The landlord testified that he has conducted repairs as needed

and that the tenant only started complaining after he was served a notice to end tenancy.

The tenant gave the following testimony. The tenant doesn't feel that the landlord's son will be moving in. The tenant testified that the unit has black toxic mold that could be fatal to his son. The tenant testified that the landlord won't let his son live in a place that's in need of so many repairs. The tenant doesn't think the landlord is acting in good faith and that the notice should be cancelled and that the tenancy should continue.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

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.*

I found that much of the tenant's submissions to have little to do with the matter at hand and was concerned with attacking the landlord and making himself appear to be the wronged party. Despite advising the tenant that this hearing would only address the issue of whether the tenancy would continue, the tenant referred to many unrelated items and didn't address the matter at hand. Based on the foregoing, where the evidence of the parties clashed, I found that the landlord's agent version to be more credible and consistent.

The landlord gave clear concise and credible testimony. He provided details as to why his son wishes to be independent and the steps he's taken to do so. The landlord stated his own hesitation in allowing his 21-year-old son to move out as he was concerned he would lose touch with his Indian culture, but ultimately wants to support his son in any and all endeavours he chooses. 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.

#### Conclusion

The Two Month Notice for Landlords Use of Property dated January 17, 2021 with an effective date of March 31, 2021 is of full effect and force. The tenancy is terminated. The landlord is granted an order of possession.

The tenant's application is dismissed in its 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: April 23, 2021

---

Residential Tenancy Branch