



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

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

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

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

### Issue(s) to be Decided

Is the notice to end tenancy valid for its stated purpose?

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: the tenancy of a cabin started on May 15, 2020. Rent of \$900.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. On April 17, 2021 the Landlord served the Tenants with a two month notice to end tenancy for landlord’s use dated April 17, 2021 (the “Notice”). The reason stated on the Notice is that the Landlord or Landlord’s spouse will occupy the unit.

The Tenants state that the Landlord does not have the good faith intention to occupy the unit as the Landlord has been telling the Tenants over the past 6 months that the Landlord will be selling the property containing the unit. The Tenants state that after

serving the Tenants with the Notice the Landlord continued to say that the property would be sold. The Tenants provide copies of voice recordings of the Landlord making these statements.

The Landlord states that the Landlord currently occupies a mobile home with an attachment on the same property. The Landlord states that the cabin will be occupied by the Landlord as the Landlord has suffered a stroke, has medical issues from the stroke and cannot manage the stairs in the mobile home. The Landlord states that the Landlord's medical condition is such that the cabin is more suited to the Landlord's needs. The Landlord states that the mobile home is rat infested and in need of repairs. The Landlord states that it is the Landlord's intention to repair or renovate the mobile home and then rent it. The Landlord states that if the mobile home cannot be repaired it will be demolished. The Landlord states that the Landlord has considered and continues to consider selling the entire property and that the Landlord does not know what to do. The Landlord states that at times after serving the Notice the Landlord did consider selling the property. The Landlord states that the Landlord has been occupying the mobile home since his wife bought the property in 2007. The Landlord states that after his wife's death the Landlord purchased the daughters' share of the property with it being transferred to the Landlord in March 2021. The Landlord states that selling the property has been thought about by the Landlord as the Landlord maybe cannot deal with renters. The Landlord states that he has served the Tenants with a notice to end tenancy for cause.

The Tenants state that they do not believe the Landlord will occupy the unit as the Landlord changes day to day on selling the property. The Tenants state that the Landlord currently has other tenants living with the Landlord in the mobile home. The Tenants state that no notice to end tenancy for cause has been given to them.

### 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. The Tenants' evidence of the voice recordings from the Landlord indicates the Landlord's express intention to list the property. Given the Landlord's evidence of indecision about selling or retaining the property and the Tenant's undisputed evidence of the Landlord's recordings and stated intentions about selling the property from both before and after the service of the Notice I find on a balance of probabilities that the Landlord does not have a good faith intention to occupy the unit. The Notice is therefore not valid for its stated reason and the Tenants are entitled to a cancellation of the Notice. The tenancy continues.

As the Tenants have been successful with their claim to cancel the Notice, 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 Notice is cancelled, and the tenancy continues. I grant the Tenant 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: August 25, 2021

---

Residential Tenancy Branch