



# Dispute Resolution Services

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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.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) 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

Counsel for the landlord made the following submissions. The tenancy began on July 1, 2013 with the monthly rent of \$400.00 due on the first of each month. The tenant occupies a bedroom on the main floor of the home and shares the space with two other tenants. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on April 3, 2021 with an effective date of June 30, 2021. The landlord issued the Notice 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...*

Counsel submits that the landlord is 89 years old and has difficulty climbing the stairs to get to the top floor of the home where she presently occupies. Counsel submits that she wishes to take possession of the tenants' room to allow her to have barrier free access to the outdoors without having to go up and down stairs. Counsel submits that the landlords' doctor is in favour of the landlord doing this as she had a fall in the past week that required medical attention. Counsel submits that the two other renters on the main floor are the landlord's grandchildren and can offer additional assistance.

Counsel submits that the landlord is fully aware of the consequences under section 51 of the Act if the landlord does not use the property as noted on the Notice. Counsel submits that the landlord and tenant have spoken about additional rent increases in the past, but the rent was never raised during the 8 years that the tenant has lived in the home. Counsel submits that those discussions were just that; "discussions" and that there was nothing untoward or illegal about them and are a moot point as the rent has remained the same since the tenant moved in.

The tenant gave the following testimony. The tenant testified that the landlord has requested a rent increase every year of her tenancy. The tenant testified that whenever the landlord requests it, she seeks the help of advocates as she is afraid and fearful of the landlord. The tenant testified that her bedroom and bathroom are old and in poor condition and doesn't believe the landlord will use it. The tenants advocate submits that

due to the history of discussions of rent increases, the tenant feels that the landlord is not issuing the notice in good faith.

### 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. It is worth noting, that neither party submitted a copy of the Two Month Notice to End Tenancy for Landlords Use of Property, but both parties confirmed the form and content.

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.*

Counsel for the landlord made submissions that the landlord is 89 years old with limited mobility. Counsel submits that the landlord moving into this ground floor bedroom will provide barrier free access to the outdoors without the need of going up and down stairs. In addition, with her grandchildren occupying other rooms on the same floor, she will have additional assistance when needed. Based on the above, and on a balance of probabilities, I am satisfied 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 Two Month Notice to End Tenancy for Landlords Use of Property dated April 3, 2021 remains in full effect and force.

### Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenants application is dismissed 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: August 12, 2021

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Residential Tenancy Branch