



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC, FFT

### Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on June 28, 2021 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek the landlord’s compliance with the legislation and/or tenancy agreement, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 26, 2021.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that either side provided in advance. On the basis that both parties received relevant disclosure from the other, I proceeded with the hearing.

### Issues to be Decided

Are the tenants entitled to a cancellation of the Two Month Notice?

Should the tenants be unsuccessful in seeking to cancel the Two Month Notice, is the landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the landlord obligated to comply with the legislation and/or the tenancy agreement?

Are the tenants entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

### Background and Evidence

The tenants submitted images of pages from the tenancy agreement. This shows the start of the tenancy on December 1, 2019, with the rent amount at \$1,550. The image of the first page shows the names of the landlord KM and the two tenants. These parties were in agreement that they signed the agreement in approximately mid-November.

The Applicant landlord MM is not listed on the agreement. They acknowledged this as fact in the hearing by stating they “didn’t have anything to do with writing the agreement” when not living at the property. The landlord KM did not advise the landlord MM that new tenants were in the rental unit from December 2019 onward.

The landlord MM issued the Two-Month Notice to the tenants on June 26, 2021. The tenants confirmed they received this document in person. This provided the move out end-of-tenancy as September 1, 2021. The second page of the document shows the landlord’s indication that they will occupy the rental unit.

The landlord MM provided a written submission dated August 9, 2021. They set out that basically they are/have: 50% owner; owned for over 3 years; the intention to move into the rental unit. Additionally, they stated:

- they pay the full mortgage on this rental unit and carry costs on the home;
- they rent a separate residence elsewhere since 2017 and can no longer afford this;
- they have financial hardship in their business and personal life.

Another reason for their need to move into the unit to block illegal activity which was negatively affecting their own credit score, and their own business and income. They state this arose from the landlord KM’s own use of the property.

The landlord MM also stated: “I am running out of money and intend on using the property for myself in good faith as per section RTB-32 guideline.”

In the evidence, the landlord MM provided an image of their message of July 15 to the landlord KM. They stated: “you have bled me out financially with lawyers fees, the mortgage, rent and now with impending court costs, you leave me no choice but to move back into our house.” All parties in the hearing were aware that this was a situation where the landlord MM and the landlord KM were in the process of legally separating.

In the hearing the landlord MM presented that the Two-Month Notice is valid and issued in good faith because he is 50% owner of the house as stated on the title. This is verified on the tax form they received in regard to this property; they also received a bill for \$18,000 from the government. In sum, they stated they are paying all land taxes and mortgage, but not receiving any income from this property.

The landlord KM in the hearing advised that they disagree that landlord MM makes all payments on this property. They stated clearly that they did not want to evict the tenants here.

The tenants submitted a written statement that sets out the circumstances in which they received the Two-Month Notice from the landlord MM on June 26. They had never met the landlord MM before. The landlord MM stated to the tenants that [their] divorce hearing was not set for over a year from now and that [landlord KM] would not talk to [landlord MM] and that [landlord MM] wanted it to move faster.” The tenants sum up their position thus: “We feel that [landlord MM] is not moving in for any other reason but to try and make things uncomfortable in the divorce in order to speed the proceedings.”

The landlord KM present in the hearings reiterated this point, stating they “just don’t believe [landlord MM] is moving in because [they] can’t afford it. . . [they are] just pushing things, or not moving in at all.”

### Analysis

On my review of the circumstances in this tenancy, I find the definition of “landlord” as set out in s. 1 of the *Act* applies here. Though the other landlord KM questioned MM’s true payments towards the mortgage of the property, I find the evidence shows MM has an interest in the ownership of the property, such that a portion of that interest was transferred to the tenants through the tenancy agreement. The fact that MM was not a co-signee of the tenancy agreement does not diminish their personal share in the property.

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

Following this, s. 55 provides that I must grant to the landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the tenant's Application or uphold the landlord's notice.

In this matter, the landlord MM bears the onus to prove that the reason for ending the tenancy is valid and undertaken in good faith.

I find the landlord MM has not met the burden to show they issued the Two-Month Notice in good faith. I am not satisfied that the landlord MM's need for the rental unit is legitimate.

While the landlord MM pointed to their financial situation in their statements, they did not provide sufficient evidence to give a fulsome picture of the situation. They did not present objectively sourced material to show how depleted resources have left them with no other choice but to occupy this rental unit.

The only record provided by the landlord MM here was their message to the other landlord KM, pointing to KM as the source of their financial difficulties. This is in the context of a legal separation and I find this message does not lend weight to the landlord MM's submission. Rather, it is a pointed message that shows the landlord MM merely informing KM of the situation, instead of more tangible evidence that would give more pertinent financial information. I appreciate that in the context of a legal separation this may not be possible; however, this cascades into a deep impact on the tenants here.

The nature of this message lends weight to statements of the landlord KM and the tenants. The true reason for the landlord MM issuing the Two-Month Notice is thus obscured, and in this situation I find it more likely than not that there was an ulterior motive. It is palpable concern that MM is attempting to bridge communication with KM and MM here did not provide evidence that outweighs that concern. The timing of this message to KM – that is, before MM learned of this dispute – has not added weight to the statement as evidence of MM's finances.

With these reasons, I conclude that the landlord MM did not issue the Two-Month Notice in good faith. The Two-Month Notice is thus cancelled, and the tenancy will continue.

The tenants also applied on the grounds that the landlord should comply with the legislation and/or the tenancy agreement. When I questioned the tenants directly on

this, they admitted this was another way for them to make the same appeal. Given my finding above, I dismiss this portion of the tenant's claim without leave to reapply.

As the tenants were successful in this Application, I find they are entitled to recover the \$100.00 filing fee. I authorize the tenants to withhold the amount of \$100.00 from one future rent payment.

### Conclusion

For the reasons above, I order that the Two-Month Notice issued by the landlord MM on June 26, 2021 is cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 27, 2021

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Residential Tenancy Branch