



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on May 26, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated May 12, 2021; and
- an order granting the return of the filing fee.

The Tenant C.O. and the Landlords attended the hearing at the appointed date and time. At the start of the hearing, the Landlords confirmed having received the Tenants' Application and documentary evidence. As there were no issues raised relating to service of these documents, I find they were sufficiently served pursuant to Section 71 of the *Act*. The Landlords confirmed that they did not submit any documentary evidence in response to the Application.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Two Month Notice, pursuant to Section 49 of the *Act*?
2. Are the Tenants entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are not successful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 14, 2014. The current Landlords purchased the rental property on January 15, 2020. The Tenants pay rent in the amount of \$923.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$450.00 which the Landlords continue to hold. The Tenants continue to occupy the rental unit.

The Landlords testified that they served the Tenants with the Two Month Notice on May 12, 2021 with an effective vacancy date of July 31, 2021 by posting the Notice on the Tenants' door. The Tenant confirmed having received the Two Month Notice on the same day. The Landlords' reason for ending the tenancy on the Two Month Notice is;

*"The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."*

The Landlords stated that they served the Two Month Notice to the Tenants for the purpose of having their son L.M. occupy the rental unit once they gain vacant possession. The Landlords stated that currently, their 19-year-old son resides with them in the family home. The Landlords stated that their son has maintained employment as a mechanic next door to the rental unit for the past 7 months. The Landlords stated that their son was offered and has accepted a two year apprenticeship program and will attend a education institution near the rental unit. As such, the Landlords' son intends to occupy the rental unit long term given the close proximity to work and school.

In response, the Tenant stated that he feels as though the Landlords have served the Two Month Notice in bad faith. The Tenant stated that the Landlords are financially motivated to end the tenancy since the Tenants have occupied the rental unit long term and are paying below market rent. The Tenant stated that the Landlord has complete

renovations without permits, and have converted an upper rental unit from two bedrooms to a four bedroom rental in an attempt to maximize their profit. The Tenant stated that there are two comparable two-bedroom rental unit at the rental property, which are rented at a much higher rent. The Tenant questioned why his rental unit is being sought after rather than the other higher priced units. The parties confirmed that the other rental units at the rental property are currently occupied.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Landlords stated that their son intends to occupy the rental unit as he works next door and has accepted a two-year apprenticeship program which is in close proximity of the rental unit.

The Landlords served the Tenants with the Two Month Notice on May 12, 2021 with an effective vacancy date of July 31, 2021. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on May 12, 2021 and filed the Application on May 26, 2021. Therefore, the Tenants are within the 15-day time limit under the Act.

Although the Tenant stated that the Landlords' reasons for ending the tenancy are financially motivated, I accept that the Landlords are the owners of the rental property, and I accept that their son intends to occupy the rental while he attends school for his 2 year apprenticeship program. While the parties referred to other rental units in the rental property, I accept that they are occupied. I find that the fact that the Landlords chose the rental unit paying the least amount of rent for their son to occupy does not demonstrate bad faith. Furthermore, the fact that the Landlords have conducted renovations without permits does make their intent for their son to occupy the rental unit invalid. As a result, I am satisfied by the Landlords, on a balance of probabilities, that they have not served the Two Month Notice in bad faith.

As such, I dismiss the Tenants' Application to cancel the Two Month Notice dated May 12, 2021 without leave to reapply. The Landlords and the Tenants should be aware that if the Landlords fail to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlords may be subject to paying the Tenants the equivalent of 12 months' rent as a penalty.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlords an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective 2 Days after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

### Conclusion

The Tenants' Application seeking cancellation of the Two Month Notice dated May 12, 2021, is dismissed without leave to reapply. The Landlords are granted an order of possession effective 2 Days after service on the Tenants. The order should be served onto the Tenants as soon as possible and may be filed in the Supreme 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 *Residential Tenancy Act*.

Dated: September 27, 2021

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Residential Tenancy Branch