



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### 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; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

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.

### Issues to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The landlords' agent gave the following testimony. The tenancy began on or about October 1, 2017. Rent in the amount of \$947.00 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 September 19, 2021 with an effective date of November 30, 2021 as the landlord/owner wishes to reclaim the space for an art studio. The agent testified that the landlord who is his mother, resides in another unit in the home but requires more space to work on her art.

The agent testified that the subject unit has a skylight which offers ample natural lighting which is beneficial to his mother who is suffering from macular degeneration. The agent testified that his mother's mental health has been suffering and that she finds great pleasure in being able to do her art freely in a larger space as her space is too small. The agent testified that his mother would incorporate this unit into her present living space. The agent testified that there is no intention re-rent the unit or run an Airbnb as alleged by the tenant.

The agent testified that no one other than his mother will be moving into the home. The agent testified that the tenant has made numerous allegations that are untrue. The agent testified that they seek an order of possession.

The tenant gave the following testimony. The tenant feels the notice is "unfair" and that he's being "picked on" by the landlord and doesn't think the landlord is acting in good faith. The tenant testified that he believes that the landlord will either rent the unit out on Airbnb or re-rent it at a higher rate. The tenant testified that he believes it's very clear that the landlord acted in bad faith based on her past behaviour and that the notice should be cancelled and have the tenancy 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.*

The landlords' agent gave clear concise and credible testimony. He provided details as to the mental and physical benefits for his mother to move into the unit and provided documentation to support that. Although the tenant made some allegations, he did not provide sufficient evidence to show any bad faith. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. The Notice complies with section 52 of the Act in form and content. 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 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: February 03, 2022

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Residential Tenancy Branch