

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a Two Month Notice for Landlord's Use of Property (the "Notice") issued on September 21, 2021.

The Notice states that the rental unit will be occupied by the landlord's child.

Both parties appeared.

The tenant provided a copy of a Decision made on August 31, 2021. This dealt with an Application for Dispute Resolution by the tenants to cancel a Two Month Notice for Landlord's Use of Property (the "2 Month Notice"), issued on April 17, 2021. The 2 Month Notice states that the rental unit will be occupied by the landlord's child.

The Arbitrator found that the landlord had failed to prove on a balance of probabilities that she or a close family member intends in good faith to move into the rental unit and the 2 Month Notice was cancelled. I have noted this file number on the covering page of this Decision.

Three weeks after the hearing the landlords issued the Notice that is before me, stating the same reason that was heard on August 31, 2021, which is to have the same adult son move into the rental unit. I question whether the principle of res judicata would apply as this issue has been heard and a final decision was made.

Counsel for the landlord submits there is a material change because the landlord have now asked for their assistance and now the landlord is 100% certain they want their son to move into the rental unit.

In this case, the landlord could have obtained counsel when they issued the 2 Month Notice or when they were served with the tenants' application for dispute resolution that

was heard on August 31, 2021. The fact the landlord did not do so was their personal choice, rather than a substantial change to the situation.

Further, when the landlord issued the 2 Month Notice on September 17, 2021, they were required at that time to be 100% certain that their adult son would be moving into the rental unit. I do not find that is a material change for issuing the new Notice that is before me.

I find the merits of the Notice was already heard in the 2 Month Notice, and a Decision was made on August 31, 2021, and is final and binding. These are the same parties, and the action in the Notice is the same action in the 2 Month Notice, which it to have the same child move into the rental unit.

I find it would be an unfair administration of justice when this is an attempt for the landlord to reargue the same matter, after having received a binding decision. I find the Notice issued must be cancelled and the principle of res judicate apply. Therefore, I grant the tenants' application to cancel the Notice.

As the tenants were successful, I find the tenants are entitled to recover the cost of the filing fee from the landlord. I authorize the tenants a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord.

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 15, 2022

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Residential Tenancy Branch