



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** CNL-MT, FFT

### **Introduction**

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- more time to make an application to cancel the landlords' 2 Month Notice pursuant to section 66; and
- authorization to recover the filing fee for this application from the respondents, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenants' application. In accordance with section 89 of the *Act*, I find the landlords duly served with the tenants' application. The tenants confirmed receipt of the landlords' evidentiary materials. In accordance with section 88 of the *Act*, I find the tenants duly served with the landlords' evidentiary materials. The landlords testified that although they did receive the original evidence package from the tenants, they did not receive the latest package that was served to the landlords' old address. During the hearing, the landlords consented to being emailed the evidence. After reviewing the evidence during the hearing, the landlords consented to the admittance of this late evidence, and the hearing proceeded as scheduled.

As the tenants confirmed receipt of the 2 Month Notice dated November 1, 2021, which was posted on the tenants' door on the same date, I find that the 2 Month Notice deemed served on the tenants in accordance with sections 88 and 90 of the *Act*, 3 days after posting.

**Preliminary Issue—Tenants' Application for an Extension of Time to File Their Application for Dispute Resolution**

The tenants filed their application for dispute on November 24, 2021, although the 1 Month Notice was deemed served on November 4, 2021. The tenants had the right to dispute the Notice within 15 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

*The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).*

Normally if the tenant does not file an Application within 15 days, they are presumed to have accepted the Notice, and must vacate the rental unit. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenants testified that on November 22 or 23, 2021 they had discovered evidence on social media that the respondents had announced the purchase of the home as "revenue" property. This discovery raised the tenants' suspicions, and they filed their application immediately on November 24, 2021. By this time, the time period for disputing the 2 Month Notice had passed, but the tenants felt that the evidence they had found raised considerable doubt as to the landlords' true intentions.

RTB Policy Guideline #36 clarifies the meaning of "exceptional circumstances" as "*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered 'exceptional' circumstances include...the party did not know the applicable law or procedure*".

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenants has provided a compelling reason for the late filing of their application. I find that they had discovered information after the 15 day dispute period that raised doubt as to the landlords' true intentions. Under these circumstances, I am allowing the tenants' application for more time to make their application.

**Issues(s) to be Decided**

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlords?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on October 1, 2020, and continued on a month-to-month basis after September 30, 2021. Monthly rent is currently set at \$1,590.00, payable on the first of the month. The landlords currently hold a security deposit of \$785.00 and a pet damage deposit of \$250.00.

The home was recently purchased by the respondents, and the tenants were served with a 2 Month Notice on November 1, 2021, with an effective move-out date of January 31, 2022, for the following reason: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a closer family member intends in good faith to occupy the rental unit".

The tenants filed this application for dispute resolution after they had discovered social media postings by the landlords that they had purchased a revenue property. The tenants provided a screen capture taken on November 22, 2021 at 3:39 P.M. that showed a post that AS had posted 18 hours earlier which stated "Forever Grateful !!. We are endlessly grateful to have the ability to purchase a revenue property here in [city removed for privacy reasons]". The post included a photo of the home the tenants are currently residing in.

The tenants submitted another screen capture taken on November 24, 2021 at 10:37 A.M. of a social media post dated August 21, 2021 that stated: "Checking out an investment property here in [city withheld for privacy reasons]. Looking for more options from what's available in the market. Absolutely exciting what this business can do. From struggling to qualify for a mortgage for our first time home, to now having the opportunity to add more properties as investment and all because of our legitimate successful global business".

The landlords testified that their intentions all along was to move closer so their eldest daughter who is attending the local university could have a shorter commute to school.

The landlords testified that their current commute takes an hour and a half every morning, and the new home would save their daughter at least 30 minutes. The landlords testified that their second daughter is currently in grade 11, and also plans on attending the same university upon graduation.

The landlords testified that their intention was to rent out their current home after moving to the new home. The landlords confirmed that they have since moved into the upper portion of the home on February 1, 2022, but require the entire home as the upper floor does not properly accommodate the entire family. The landlords submitted a worksheet itemizing the expenses they have incurred to store their belongings as they have been unable to move into the entire home due to this dispute. The worksheet states that they had paid \$222.88 for the month of February 2022, and estimate further expenses until they are able to occupy the entire home. The landlords also submitted evidence to show that they had changed their addresses to the new home. The landlords also described the hardship of sharing a space that is inadequate for the size of the family, especially due to isolation requirements due to recent illness.

The landlords do not dispute making the social media posts submitted by the tenants, but testified that they understood the term “revenue property” to mean a second property as they already own property.

In the hearing, the landlords were asked why they had current online rental advertisements for their old home available April 1, 2022 when the testimony of the landlords is that the home is currently tenanted. The landlords testified in the hearing that their old home is currently rented out to two university students, with a family renting the basement suite. The landlords testified that the home was only rented out on a short-term basis, and they were hoping to fill future vacancies.

### **Analysis**

Subsection 49(5)(c) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*“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 that they do not have an ulterior motive for ending the tenancy.”*

As the tenants had raised doubt as to the true intent of the landlords in issuing the 2 Month Notice, the burden shifts to the landlords to establish that they do not have any other purpose to ending this tenancy.

Although the landlord stated that they had issued the 2 Month Notice in order to move closer to the university that their daughter is currently attending, I find that the tenants had raised doubt as to the true intent of the landlords in issuing this notice.

It is undisputed by the landlords that they had made two social media posts referencing the property as a “revenue property”, and “investment property”. The landlords’ explanation was that their choice of words was an error as they meant to announce that they had purchased additional property. The landlords provided evidence to show that they had moved in on February 1, 2022, and that their intention is to occupy the entire home once the tenants move out.

I have considered the evidence and testimony before me, and although I do not doubt that the landlords have moved into the upper portion of the home on February 1, 2022, I am not convinced that their intention was to occupy the home when the 2 Month Notice was served on the tenants. I have considered the explanation the landlords had provided for their social media posts, and I find that the landlords are able to communicate well both orally and in written form, and I am not convinced that their choice to use the words “revenue” and “investment property” was meant to communicate anything else besides the fact that the landlords had purchased this property as a means to generate investment income. I find that these posts raised considerable doubt as to the good faith intentions of why the tenants were served a 2 Month Notice.

The tenants filed their application to dispute the 2 Month Notice on November 24, 2021, and the landlords did move in on February 1, 2022. Although I believe that the landlords

did move into the upper portion of the home, I find their actions and their own testimony raised further doubt as to the landlords' motives and intentions. Considering the fact that the landlords were aware of this dispute as of late November 2021 or early December 2021, and the fact that the rental unit would remain tenanted until at least the hearing date on March 15, 2022, and considering the landlords' own testimony of the monetary hardship and inconvenience they had to face due to the fact that they could only occupy the upper portion of the home for an undetermined amount of time, I find the landlords' motives questionable as to why they had decided to rent out their home, and move into the partially occupied home on February 1, 2022, instead of waiting for the final decision for this dispute.

Even with the shorter commute to the university for the landlords' eldest daughter, I am not convinced that the temporary hardship of the lack of space and the cost of additional storage and moving these items outweighed the hardship of a longer commute. I find that the landlords themselves had emphasized the hardship of only being able to occupy a portion of the home, which begs the question of why the landlords opted to move in on February 1, 2022 and rent out their previous home instead of mitigating these losses and hardships by postponing these actions. I find that the landlords relied on this move to add credibility to their claim that their intention was to move into this home. Regardless of the landlords' motivations behind why they chose to move in on February 1, 2022 into a partially occupied home instead of waiting for the entire home to be vacant, the glaring and obvious fact remains that the landlords had announced that they had purchased the home as a revenue and investment property.

I find that the landlords have not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the landlords, in good faith, served the tenants with the 2 Month Notice in order to occupy the home themselves. I therefore allow the tenants' application to cancel the 2 Month Notice. The 2 Month Notice dated November 1, 2021 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

I allow the tenants to recover the filing fee for this application.

### **Conclusion**

The tenants' application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated November 1, 2021, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *ACT Tenancy Act*.

Dated: March 21, 2022

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Residential Tenancy Branch