



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDCT, OLC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on September 12, 2021 seeking an order to cancel the Two-Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Two-Month Notice”). Additionally, they seek the Landlord’s compliance with the legislation and/or the tenancy agreement, compensation for monetary loss, and recovery 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 February 22, 2022.

Both parties attended the conference call hearing. At the outset, I review disclosure of evidence that each party provided in advance. Each party confirmed they received evidence from the other in advance; on this basis, I proceeded with the hearing.

### Preliminary Matter

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the landlord.

I dismiss the Tenant's request for monetary compensation, with leave to re-apply. As it has no import into the key issue under consideration below, I also dismiss the Tenant's claim for the Landlord's compliance with the legislation and/or the tenancy agreement, with leave to reapply.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the Two-Month Notice?

Should the Tenant 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 Tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant provided a copy of each of the original, and latest documented tenancy agreement. The parties confirmed the tenancy started on March 1, 2014, and the current amount of rent they pay is \$2,234. The Tenant provided emails that show a discussion had between the parties regarding renewal of the yearly agreement in 2017.

The Landlords issued the Two-Month Notice to the Tenants on August 27, 2021. The Tenants confirmed they received the in their mailbox at the rental unit. This provided the move-out end-of-tenancy date as October 31, 2021. The second page of the document shows the Landlord's indication that "the landlord or the landlord's spouse" will occupy the rental unit.

In the hearing, the Landlord set out their reason for issuing the Two-Month Notice. They provided this basically is as stated in their prepared statement dated December 2, 2021. This is basically that they are looking forward to living in the suite at the time of their retirement. This is to enjoy "more space for [their] projects, activities and friends." Their current living arrangement is not amenable to their hobbies they intend to pursue further at this point in their lives. They have spent many areas in the backyard area at the rental unit property "upgrading the garden area and planting hundreds of plants" in

preparation for this. They provided affidavits attesting to this as appears in their evidence.

In their written submission, they state specifically they are aware of the penalty for not undertaking the occupancy of the rental unit for the reason stated on the Two-Month Notice. The Landlord included personal reference letters stating they were true to their intentions of moving into the rental unit, primarily to pursue their hobbies that include use of the larger yard space.

In the hearing, the Tenant presented that the Landlord owns 3 properties in total. This rental unit they currently occupy requires “quite a bit of work”, i.e., more than mere cosmetic upgrades, such as wiring. This is in contrast to where the Landlord currently resides which is well-maintained and renovated. They questioned why the Landlord would want to move into the rental unit if it did not require extensive renovations. The Tenant submits a landlord wanting to renovate is a valid reason and they would comply with that if that was the provided reason for ending this tenancy. They described how they had ongoing agreements with the Landlord for close to 10 years with no significant renovations to the rental unit.

Additionally, the Tenant provided they had no communication from the Landlord on their intention to ever want to live in the rental unit. The Tenant also pointed to past communication with the Landlord being one-sided, with no openness from the Landlord on discussing terms about utilities or other pieces of the agreement.

The Tenant also set out that they intend to move out from the rental unit at the end of August 2022. They did not have the opportunity to have this discussion with the Landlord. In the hearing, the Tenant proposed a July 1 vacancy date. The Landlord was not open to this idea, stating thus far it has been 6 months since they originally issued this Two-Month Notice to the Tenant.

In response to what they heard from the Tenant, the Landlord reiterated that any work they put into the unit would be cosmetic, with further renovations not being worth it at that property.

The Tenant also set out that they intend to move out from the rental unit at the end of August 2022. They did not have the opportunity to have this discussion with the Landlord. In the hearing, the Tenant proposed a July 1<sup>st</sup> vacancy date.

### Analysis

The Act s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or 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 bears the onus to prove the reason for ending the tenancy is valid and undertaken in good faith. This means the Landlord must demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

I am not satisfied of the facts surrounding the Landlord’s need for the rental unit. They focused primarily on their hobbies as being the reason they need the space at the rental unit property; however, I am not satisfied that is an entirely valid reason for ending the tenancy in this shorter timeline necessary to put those goals into motion. I believe they intend to undertake these hobbies as stated; however, I am not convinced of their need for the space, over and above the immediate impact this would have on the life of the Tenant. I also factor in the established fact that the Landlord is living in another residence on their own, and the Landlord did not present any pressing need to move out from that other home.

I find there is no dishonest motive behind the Landlord seeking to end the tenancy for their own use of the rental unit. The Tenant did not establish on a solid basis that the Landlord will come in to start larger renovations, and the Tenant’s communication with the Landlord on past terms of the tenancy does not shed light on a dishonest motive on the part of the Landlord. From my perspective it is simply a matter of timing, and I am not satisfied the Landlord’s hobbies and pursuits necessitate the end of this tenancy in the timeline they are seeking.

With the Tenant now announcing their plans for an imminent end to this tenancy – even with an establish timeline – I find it reasonable that the parties can reach an agreement. There appears to be room for compromise on the Landlord’s own access to the areas for setting up a workshop or use of the larger yard for gardening that the Tenant can make available to them, given that the Landlord’s current residence is nearby.

The Two-Month Notice is thus cancelled, and the tenancy will continue.

As the Tenant was successful in this Application, I find they are entitled to recover the \$100.00 filing fee. I authorize the Tenant 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 on August 30, 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: March 3, 2022

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Residential Tenancy Branch