



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL, OLC, RR, PSF, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed on January 10, 2022, to be allowed to reduce rent for service pr, to have the landlord provide services or facilities required by the Act, to have the landlord comply with the Act, and to recover the cost of the filing fee.

This hearing also dealt with an Application for Dispute Resolution by the tenants on January 19, 2022, to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), issued on January 5, 2022, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. All parties confirmed under affirmation that they were not recording this proceeding.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application and multiple applications. In these circumstances the tenants have filed two application that are not related.

The most urgent of which is the application filed on January 19, 2022, to set aside the Notice to End Tenancy. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the tenants' application filed on January 10, 2022, is dismissed with leave to reapply.

The tenants confirmed they received the landlords' evidence. The landlord indicated they did not receive the tenants' evidence until March 17, 2022, and then both landlords

did not receive a copy. The landlord stated the tenant was required to submit their evidence at the time they made their application.

In this case, I have allowed the tenant's evidence that is related to the Notice, while the tenants should have served both landlords a copy of the evidence, I find do not find this was prejudicial to the landlord's as they are prepared to proceed. Furthermore, the tenant's evidence was received by the landlord over 14 days before the hearing.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on October 15, 2020. Rent in the amount of \$1,750.00 was payable on the 15th of each month. The tenants paid a security deposit of \$857.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on March 14, 2022.

The reason stated in the Notice was that:

- The rental unit will 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). Specifically, the child of the landlord or landlord's spouse.

The landlord testified that they have always had a good relationship with the tenants until they informed them on January 5, 2022, that their daughter had sold her condo and has their job, and would be moving to into the rental unit as they had secured employment in that area and would be attending school fulltime in the fall.

The landlord testified that the tenants only filed their application on January 10, 2022, in retaliation and making a false claim that they have failed to provide services. This was after they were served with the Notice and then later disputed the Notice in their second application.

The tenants testified that all condition of the sale have not been met because there are still active building and plumbing permit outstanding from 2017 and there was a hold back on the sale of the property.

The tenants testified that there are also other rentals unit to which the landlord's child could live, and is currently living in the landlord's home, whom are not at the property often. I confirmed with the tenants that there are no other "rental units" on the property, except for the landlord's premises.

The tenants testified that there is also a restrictive covenant on the suite, which it only permits occupancy for employees working within the community.

The landlord responded that the sale of the property was completed. The landlord stated that their child has had no option but to stay in their premises until the effective date of the Notice and put their own belongings in storage. The landlord stated the tenants did not pay rent on March 15, 2022, as they accepted the compensation for receiving the Notice.

The tenants responded that they did not pay rent on March 15, 2022, because they thought they had found accommodations for April 15, 2022, and that would be the last month of their tenancy.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have provided sufficient evidence to show that:

- The rental unit will 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 child of the landlord or landlord's spouse.

In this case the landlord's adult child sold their premises and quit their job in another city, to move to the subject area. This was for the landlord's child to obtain employment and to enhance their post secondary education. The landlord's child has been staying in the landlord's portion of the premises since the end of January or the beginning of February 2022.

While the tenants indicate the landlord's child could remain living in the landlord's premises; however, that is not up to me to decide. The landlord's child is an adult, and it would be reasonable that they could have their own belongings, which are currently in storage and live in their own premises.

I do not accept that having an outstanding building permit from when the property was built, prior to the landlord' taking possession is relevant or goes towards the issue of good faith.

While I accept there may be some type of restrictive covenant of the property that relates to the rental unit, I would expect if rented; however, that is not for me to considered as this would be a municipal issue.

I also find it highly unlikely that any restrictive covenant would prohibit the owner for using their own property for their own purpose, which is to have their child reside there while working and/or going to school.

Based on the above, I find there is no evidence that would lead me to believe that the landlords have any ulterior motive for end the tenancy, such at attempt to increase the rent. The landlord's child has been staying on the premises waiting to take possession on the rental unit.

I find the Notice issued on January 5, 2022, has been proven by the landlords and is valid and enforceable. Therefore, I dismiss the tenants' application to cancel the Notice.

As the tenancy legally ended on the effective date of the Notice, which is March 14, 2022, and the tenants are overholding the premises. I find the landlords are entitled to an order of possession, pursuant to section 55 of the Act.

Although the landlords would be entitled to an order of possession, effective **two days** after service on the tenants. I find it reasonable in this circumstance to deem rent was paid on March 15, 2022, for March rent, as that was the tenants' compensation for receiving the Notice. Therefore, I find the landlords are entitled to an order of possession effective on April 14, 2022, as that is the last day of the rental period.

Since I have dismissed the tenants' application, I find that the landlord is entitled to an order of possession effective April 14, 2022, **at 1:00 P.M.** This order must be served on

the tenants and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenants.

Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlords.

Conclusion

The tenants' application to cancel the Notice dismissed. The landlords are granted an order of possession.

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: April 11, 2022

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Residential Tenancy Branch