



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, CNL**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenants attended ("the tenant"). The landlord attended with his son and agent ND ("the landlord"). ND provided affirmed testimony. No issues of service were raised. The hearing process was explained. The landlord submitted no documentary evidence.

During the hearing, ND suddenly ended his connection with the teleconference hearing without notification or explanation to the Arbitrator. ND then rejoined the call some time later from a noisy location which he said was his car. ND then disconnected from the hearing, again without notification to the Arbitrator, reconnecting later and providing testimony.

Each party confirmed the email address to which this Decision shall be sent.

I informed the parties that no recording of the arbitration was permitted. Each party stated they were not recording the hearing.

Preliminary issues are addressed.

### *Preliminary Issue - Burden of Proof*

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

*Residential Tenancy Branch Rules of Procedure - Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first.

Consequently, even though the tenant applied for dispute resolution and is the Applicant, the landlord presented their evidence first.

### Issues

Are the tenants entitled to the relief requested?

### Background and Evidence

The parties explained the unit is in a building owned by the landlord. The landlord also rents the neighbouring duplex.

The parties did not submit a copy of the tenancy agreement.

The landlord requested an Order of Possession as they intended to move into the tenant's unit. The tenant objected to the application and asserted the landlord did not have good faith in the issuance of the Notice.

The parties agreed as follows about the background of the tenancy.

INFORMATION	DETAILS
Type of tenancy	monthly
Date of beginning	2001
Date of ending	ongoing

Length of tenancy	21 years
Monthly rent payable on 1 <sup>st</sup>	\$1,675.00
Security and pet deposit	\$800.00
Date of Application	February 7,2022

The parties agreed as follows with respect to the landlord's Notice:

INFORMATION	DETAILS
Type of Notice	Two Month Notice to End Tenancy for Landlord's Use
Date of Notice	January 25, 2022
Effective Date of Notice	March 31, 2022
Date and Method of Service	Personal on January 25, 2022
Effective Date of Service	January 25, 2022
Application for Dispute Resolution filed - date	February 7,2022

The Notice stated the landlord's son intended to occupy the unit. The Notice was in the standard RTB form. The tenant applied to dispute the Notice within the time permitted.

#### *Landlord's Testimony*

The landlord testified as follows. He has owned the building in which the unit is located from the beginning of the 21-year tenancy. The landlord now wants to transfer his property, including this building, to his children, including his son ND who attended the hearing. ND needs a place to live as ND has sold his house and is renting elsewhere. His intentions are to have ND move into the unit.

The landlord fulfilled his duties to repair and maintain the unit. When they received the written request to repair the railing, they replaced it as soon as possible. The incident had nothing to do with issuing the Notice.

ND testified he plans to move into the unit as soon as possible. He does not need to give notice where he is currently renting.

### *Tenant's Testimony*

The tenant testified as follows. The parties had an increasingly acrimonious relationship throughout the tenancy over the issue of repairs to the unit. The unit increasingly needed repairs. The landlord failed or refused to do the work the tenant believed was necessary. As a result, the tenant did some work themselves or paid to have it done.

For example, the tenant paid for a new water tank and furnace repairs several years ago and the landlord did not repay the tenant's expenses. The unit currently needs considerable repairs in support of which the tenant submitted several photographs.

Since 2017, the landlord began to get increasingly angry over the tenant's requests for repairs. The tenant became progressively more cautious about such requests.

All discussions between the parties about repairs were verbal until October 2021 when the tenant sent a letter to the landlord asking that they repair a rotting railing by the exterior basement stairs as they were concerned someone would get injured. The tenant submitted a picture of the railing which showed a sagging, crumbling railing adjacent to stairs. The landlord replaced the railing at the end of December 2021. The tenant said they suspected the repair would be followed by an eviction notice.

The tenant and the landlord increasingly argued over other tenancy matters. For example, the tenant said the landlord came to the unit without notice and they argued over the unscheduled visit.

The tenant asserted the Notice was not issued in good faith for three reasons.

Firstly, in the past, the tenant has verbally informed the landlord of major repairs needed to the duplex. However, the tenant has only submitted one written request and that was about the railing. A few weeks later, the landlord issued the Two Month Notice.

Attempting to evict the tenant so soon afterwards led the tenant to believe the landlord is retaliating as well as concerned about future requests for repairs.

Secondly, market rent was significantly more than the current rental for the unit and the landlord may intend to rent the unit for more money.

Thirdly, the landlord owns the neighbouring duplex which is in better condition than the tenant's unit. The landlord has selected the tenant for eviction to get rid of them.

### *Landlord's Reply*

The landlord denied the tenant's version of events or description of their motive. The landlord testified they merely want their son to live in the unit. They denied seeking revenge or retaliation as claimed by the tenant. They objected to the tenant's statements that they were slow to do repairs or refused to do them. The unit was in good condition. The landlord promptly replaced the railing after receiving the written request.

The landlord asserted that the sole purpose for the issuance of the Notice was for ND to move into the unit.

The landlord described the tenants and their living conditions in derogatory terms. They denied being angry about repair requests or wanting to get rid of the tenant to avoid repairs.

The reason the landlord selected the tenant's duplex and not the neighbouring one was because the smaller size suited his son. The neighbouring duplex, although in better condition, was not suitable.

### *Summary*

The tenant requested the Notice be cancelled as the landlord did not issue it in "good faith".

The landlord requested an Order of Possession.

## Analysis

While I have turned my mind to the documentary evidence and the testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

### *The Act and Guidelines*

To evict a tenant for landlord's use of the property, the landlord has the burden of proving the reasons on the Notice. The parties had contrasting narratives which were provided in detail in the hearing.

The tenant raised the issue of the intention of the landlord in issuing the Notice. The tenant questioned whether the landlord's plan for his son ND to occupy the unit was genuine. The tenant expressed a lack of confidence in the landlord's stated plan. The tenant argued the landlord issued the notice in retaliation for the tenant's repair requests, especially the written request shortly before the Notice was served.

The tenant asserted that the landlord has not issued the Two Month Notice in good faith but instead simply wants to get rid of the tenant, once a valued tenant, and now estranged. The motive, the tenant asserted, is retaliation and fear of requests for costly repairs. The tenant also opined that the landlord could rent the duplex for substantially more rent than paid by the tenant. As well, the landlord could have chosen the neighboring duplex which the parties agreed was in the better condition.

*The Residential Tenancy Branch Policy Guideline # 2* states *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 Two Month Notice.

This Guideline reads in part as follows:

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.

### *Credibility*

In assessing the tenant's credibility, I found the tenant sincere and believable. Although the unit needs considerable repairs, it has been their home for many years and they want to continue to live there. Their testimony was supported in all material aspects by documentary evidence. I found the landlord was not matter of fact or credible. He heatedly disparaged the tenant's behavior and living conditions. After considering the evidence and testimony of the landlord, where the parties' testimony differs, I give greater weight to the tenant's version of events.

### *Findings*

The tenant has raised the good faith intention of the landlord which I find has some basis.

While the landlord denied they hold any resentment or ulterior motive, I accept the tenant's testimony that the parties acrimoniously argued. I also accept the tenant's testimony that they wrote to the landlord requesting a repair for the first time. Shortly after these events, I find the landlord issued the Notice.

I have carefully considered the evidence. I find that there was a conflict between the parties as well as the tenant's first written request for repairs shortly before the Notice was issued.

I find that the timing of the Two Month Notice so quickly after the disagreement and the written repair request, raises doubts about the bona fide intentions of the landlord.

While the landlord provided some explanation about the reason for issuing the Notice as supported by ND's testimony, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice.

I find there are reasonable doubts about the intention of the landlord to occupy the unit at the end this tenancy. I find the landlord has not met the burden of proof that they intend to do what they said in the Notice. The landlord submitted no documentary evidence in support of their claim.

In any event, while the landlord may indeed intend to use the rental unit for the purposes stated on the Notice, I find there may be additional reasons fueling the issuance of the Notice. I find the landlord has not met the burden of proof that they do not have an ulterior motive in issuing the Notice. Therefore, I find that the good faith argument has merit.

Consequently, I cancel the Two Month Notice. This tenancy will continue until it is ended in accordance with the agreement and the *Act*.

As the tenant have been successful in this application, the tenant is entitled to be reimbursed for the filing fee. Pursuant to section 72, the tenant is authorized to deduct this amount from rent payable in the amount of \$100.00 for one month only.

### Conclusion

The tenant's application to cancel the Two Month Notice is allowed. The Two Month Notice has no continuing force or effect. This tenancy will continue until ended according to the *Act*.

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: May 18, 2022

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Residential Tenancy Branch