



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on February 15, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 01, 2022 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing with K.C. and T.S., their advocates. A.Y., a property manager, appeared at the hearing as an agent for the Landlords. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. A.Y. confirmed receipt of the hearing package and Tenant’s evidence. K.C. accepted that the Landlords’ evidence was served on the Tenant; however, did not have it at the hearing. A.Y. re-sent the Landlords’ evidence to K.C. by email during the hearing and K.C. confirmed receipt of it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlords be issued an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started May 01, 2021, and was for a fixed term ending May 01, 2022. Rent is \$1,500.00 per month due on or before the first day of each month.

The Notice was submitted. The grounds for the Notice are:

The rental unit will be occupied by the Landlord or the Landlord's close family member.

The Notice states that the Landlord or Landlord's spouse intends to occupy the rental unit.

A.Y. testified that the Notice was attached to the door of the rental unit February 01, 2022. The Tenant testified that they received the first two pages of the Notice February 02, 2022. In reply, A.Y. testified that all four pages of the Notice were served on the Tenant, and, in fact, the Tenant provided a copy of the Notice including all four pages to A.Y. with their materials.

A.Y. testified that Landlord J.B. and their spouse intend to move into the rental unit. A.Y. testified that J.B.'s husband's business located in another city closed and J.B. is moving back to the location of the rental unit. A.Y. referred to documentary evidence submitted including an announcement about J.B.'s husband's business closing and a statement from J.B.'s realtor. A.Y. testified that the rental unit is the lower suite of a house with two suites and that J.B. and their husband intend to move into the lower suite only, not the entire house.

The Landlord submitted the following relevant documentary evidence. An email dated March 22, 2022, from J.B.'s real estate agent stating that J.B. is in the process of relocating to the rental unit. An unsigned typed statement from J.B. An unsigned typed statement from J.B.'s husband. A social media post about J.B.'s husband's business closing. A Proof of Service for the Notice.

The Tenant and K.C. disputed that J.B. intends to move into the rental. The Tenant and K.B. submitted that J.B. will be travelling all over the world given their profession. The Tenant and K.C. submitted that the Notice was issued because the Tenant recently raised the issue of the rental unit being an illegal suite with the district. K.C. pointed out that J.B. did not appear at the hearing to provide testimony and instead left it to A.Y. to submit that J.B. intends to move into the rental unit. The Tenant testified that the Landlords purchased the rental unit as an investment home and rented to the Tenant on a long-term basis. The Tenant pointed to an article in evidence about J.B.'s husband's business closing and a statement in it about why the business closed and what J.B. and their husband intend to do.

The Tenant submitted a news article from January 16, 2022, about why J.B.'s husband's business closed. The article states that J.B.'s husband said that due to their son and J.B.'s careers they will be out of the country eight times in 2022. The article states that J.B.'s husband said they are not leaving the city but instead are downsizing elsewhere in the city. The Tenant submitted a text message from J.B. dated July 06<sup>th</sup> telling the Tenant to stop communicating with the upstairs tenants and that if they do not stop, the Landlords will be forced to evict the Tenant.

### Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

RTB Policy Guideline 2A addresses ending a tenancy for occupancy by a landlord or their close family member and addresses the good faith requirement in section 49(3) of the *Act*.

The Landlords have the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

Based on the Proof of Service in evidence, I accept that all four pages of the Notice were served on the Tenant. Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. Based on the testimony of the parties, I find the Tenant received the Notice February 02, 2022. The Tenant disputed the Notice February 15, 2022, within time.

I am not satisfied based on the evidence provided that the Landlords have proven the grounds for the Notice.

I do not find A.Y.'s testimony about J.B. and J.B.'s husband's intentions to move into the rental unit compelling because A.Y. is simply a property manager acting as agent for J.B. and J.B.'s husband. I am not satisfied A.Y. has personal knowledge of J.B. and J.B.'s husband's intentions and understand that A.Y. is simply relaying what they have been told.

I do not find the email from J.B.'s real estate agent compelling because again, I am not satisfied they have personal knowledge of J.B. and J.B.'s husband's intentions.

Affirmed testimony of J.B. and their husband would be compelling evidence. However, neither J.B. nor their husband appeared at the hearing to provide affirmed testimony. Further, neither J.B. nor their husband provided Affidavits setting out their intentions. The only evidence before me directly from J.B. and their husband are unsigned typed statements. Unsigned typed statements are not compelling evidence and are not sufficient to prove the grounds for the Notice, particularly given the Tenant has provided independent documentary evidence, being the news article and text message, that does raise a real issue as to the intentions of J.B. and J.B.'s husband. In the absence of further compelling evidence from J.B. and their husband about their intentions, I am not satisfied the Landlords have proven the grounds for the Notice and the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment.

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*.

Dated: June 03, 2022

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Residential Tenancy Branch