



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDCT

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. A Monetary Order for compensation - Section 67.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Landlord confirms that they received the Tenant’s evidence package. The Landlord confirms that the Tenants were not given the statement provided by the Landlord as evidence for this hearing. As the Tenants did not receive the Landlord’s evidence, I may not consider the document however the Landlord may give oral testimony on this statement.

The Tenant confirms that the claim for compensation is not related to whether or not the tenancy will end.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the compensation claim is not related to

the matter of whether or not the tenancy will end, I dismiss this claim with leave to reapply.

Issue(s) to be Decided

Does the Landlord have a good faith intention to occupy the unit?

Are the Tenants entitled to a cancellation of the Notice?

Background and Evidence

The following are agreed facts: the tenancy under written agreement of one of three units in a house started on December 1, 2014. Rent of \$900.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. On February 27, 2022 the Landlord gave the Tenants a two month notice to end tenancy for landlord's use dated February 27, 2022 (the "Notice"). The Notice sets out that the Landlord or the landlord's spouse will occupy the unit.

The Landlord states as follows:

The unit is one of three rental units in a house. The Landlord is currently going through a marital separation, the discussions for which started in early January or the beginning of February 2022. The Landlord immediately informed the Tenants of the separation following which the Landlord served the Notice. The Landlord also served the tenants in the other two units with notices to end tenancy for landlord's use for the same reason.

The Landlord intends to occupy all three units as follows:

- the one upper unit with three bedrooms will be occupied by the Landlord and the two children of the Landlord who will reside with the Landlord two days each week; and
- the two lower level one bedroom units, one of which is the Tenant's unit, will be converted into a gym and office space with the other being used for the Landlord's parents to stay for several months when they come from outside the country to visit.

The Landlord's parents wish to have separate space while they are visiting and as they are from a different culture and have a different language the parent will not want to stay where there are other tenants, and this may create an issue with the tenants. Although the one lower unit has been vacant since April 30, 2022 the Landlord cannot occupy that unit until the Tenants move out as the Tenants have cats. The Landlord and his children have allergies to cats and the proximity of the cats on the same level will affect the Landlord and the children. The Landlord has a dog that does not react well with others and the dog may create problems if there are tenants in the house and sharing the yard. The dog will also create problems with the Tenants' cats.

The Tenant states as follows:

The Landlord sent the Tenant a text prior to the Notice being served that the Landlord did not want to live in the house for a full six months and the Landlord offered to compensate the Tenants for this possibility as the Landlord did not want to have to pay the 12-month penalty if the Landlord did not occupy the unit for 6 months. The Tenant argues that this admission goes to show that the Landlord does not have the good faith intention to occupy the unit as required under the Act. The Tenant does not believe that the Landlord will occupy all the units as they are separate units each with their own appliances and that the Landlord does not need the large space. The Tenant's sister-in-law originally owned the house and chose to sell it to the Landlord as the Landlord was looking for investment property and for the Tenant to rent the unit as long as the Tenant wished. The Tenant argues that the Landlord did not indicate on the Notice that the unit would be occupied by either the children or the parents. The Tenant notes that the Landlord provided no supporting evidence and argues that the Landlord has not met the burden of proof as the Landlord's testimony alone is insufficient to prove that the Landlord has the good faith intention to occupy the unit. The Tenant argues that the current vacant unit did not have any cats and questions the Landlord's evidence that the proximity of the Tenant's cats would affect the Landlord or the children. The Tenant argues that the property is located in an exclusive area that can command double the

rental amount currently being obtained and that this, and the Landlord's earlier statement that the Landlord may not reside in the unit for the full six months, supports that the Landlord will rent the units for greater rents instead of occupying the units.

The Landlord states as follows:

The texts referred to by the Tenant was sent before the Landlord had made firm plans for the future as at the time the Landlord had just separated. The Tenant was informed at that time that if the Landlord did decide to move to another city before occupying the unit for six months the house would be sold. Now the Landlord is "pretty sure" the Landlord will occupy the unit for six months as the children do not want the Landlord to move. There was no agreement at the time of purchasing the house that the Tenants could continue their tenancies for any length of time. The Landlord's parents have yet to book their flights as the flight situation is still uncertain and the Landlord needs to get them a place to stay before the flights are booked. The Landlord does not know why they must prove their intention to occupy the units since they own the house. The texts are not related to the Landlord's good faith intention as they were sent when the Landlord's plans were still uncertain. The requirement to occupy the unit for 6 months is not relevant to whether or not the Landlord has a good faith intention to occupy the unit. The Landlord can have a good faith intention at the time of the Notice and later change their mind. If the Landlord does not occupy the unit for the full six months, the Tenant can then apply for the compensation, but this does not affect the current good faith intention of the Landlord. When the Landlord's parents come to visit, they like big quiet spaces. Further the Landlord wants all the units as the Landlord's own space and the Landlord does not want to deal with other tenants. The Tenant assumes that the Landlord does not need a large space, but the Landlord does need the space and does not want to share any of it with other tenants.

The Tenant argues that the 6-month occupancy is part of the Act's requirements for occupation of the unit and therefore is relevant to determining the good faith intention

### Analysis

Section 49(3) of the Act provides that 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. Policy Guideline 2A provides inter alia under the heading “Good Faith” that if there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith. The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

There is no dispute that the unit is located in an area that would attract much higher rents than currently being paid by the Tenant. There is no dispute that prior to given the Notice the Landlord informed the Tenant that they were not sure that they would occupy the unit for at least 6 months and that if the Landlord did not occupy the unit for 6 months, the house would be sold. The Landlord’s evidence is that there still is no certainty that the Landlord will occupy the unit for at least 6 months.

The Landlord provided no supporting evidence from the Landlord’s partner about the plans for the children or the separation. It is undisputed that the Landlord also ended the tenancy of the three-bedroom unit in the house, there is no evidence that the tenants in that unit have disputed their notice and it is undisputed that the Landlord intends to occupy this unit with the children. The Landlord’s evidence for the use of the Tenants’ unit is vague and it may or may not be used for an office or gym or for the parents when they visit. The Landlord gave no evidence of any expected arrival date of the parents from out of county. The Landlord gave no supporting evidence from the parents of their intention to visit within the next 6 months. There is no evidence on how the Tenant’s unit will be occupied by the Landlord if the parents do not come to visit as there are only plans for one of the two lower units to be used as an office.

For the above reasons I find on a balance of probabilities that the Landlord has not sufficiently substantiated that the Landlord has the good faith intention to occupy the

Tenants' unit and that the Tenants are therefore entitled to a cancellation of the Notice.  
The tenancy continues.

Conclusion

The Notice is cancelled, and the tenancy continues.

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 15, 2022

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Residential Tenancy Branch