



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, LRE, FFT, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice);
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and,
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the issue of whether or not the landlord had grounds to issue the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background & Evidence

The rental unit is a one-bedroom unit on the main floor of a residential house. The tenancy began in April 2019.

The landlord served the tenant with a Two Month Notice on February 26, 2022. The effective date of the Two Month Notice was April 30, 2022. The Notice was issued on the grounds that the landlord's spouse intends in good faith to occupy the rental unit. The tenant's application to dispute the Notice was filed on March 8, 2022, within the timelines permitted under the Act.

The landlord testified that she and her spouse are an elderly couple currently residing in the upper floor of the house. The landlord testified the Notice was issued due to the health conditions of her spouse who has arthritis and heart issues making climbing stairs an extreme difficulty.

The tenants are disputing the Two Month Notice on the grounds that it was not issued in good faith. The tenants submit that the landlord attempted to previously end the tenancy by issuing a One Month Notice for Cause on two previous occasions, one in July 2021 and recently on December 24, 2021. In both instances, the tenants' application to cancel the One Month Notice was successful and the Notices were cancelled. The landlord's dissatisfaction with the alleged lack of cleanliness of the rental unit was an issue in the previous hearing. The tenants testified that even after receiving the result of the previous decision the landlord called a meeting with them during which she questioned when they would be moving. The tenants testified that they always see the landlord's husband walking about the house, doing work outside and driving a car without any issue and from what they can see his condition appears to be fine.

### Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

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 Notice to End the 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.

The landlord served the tenants with the Two Month Notice on February 26, 2022, which is only two months after the landlord's latest One Month Notice was cancelled in a previous decision. The landlord has not submitted any supporting evidence such as doctor's notes etc. to support her testimony that the deteriorating health of her spouse is the reason for the Notice being issued. Rather, aside from a personal reference letter, the only evidence submitted by the landlord was a move-in condition inspection report and pictures depicting the current condition of the rental unit.

Based on the above, I find that there is sufficient evidence of an ulterior motive to end the tenancy on the part of the landlord. I find the landlord's dissatisfaction with the alleged lack of cleanliness and perhaps dissatisfaction with the tenants in general remains the landlords motive for attempting to end this tenancy. The landlord has failed to establish that she does not have an ulterior motive for ending the tenancy and that she truly intends to use the rental unit for the purpose stated in the Notice.

I allow the tenant's application to cancel the landlord's Two Month Notice, dated February 26, 2022, which is hereby cancelled and of no force or effect.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenants may reduce a future rent payment in the amount of \$100.00.

### Conclusion

I allow the tenants application to cancel the landlord's Two Month Notice, dated February 26, 2022, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with 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: June 24, 2022

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Residential Tenancy Branch