



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, PSF, CNL, OLC, AAT, FFT3**

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel a One Month Notice for Cause (the “One Month Notice”) issued on March 31, 2022, to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) issued on April 1, 2022, to have the landlord provide services or facilities required by the tenancy agreement or law, for the landlord to allow access to the unit for me and my guest, to have the landlord comply with the Act 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.

The landlord confirmed they received the evidence of the tenant. The landlord did not submit any evidence for my consideration.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the One Month Notice and the Two Month Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the notices to end the tenancy, and to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed with leave to reapply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the One Month Notice and the Two Month Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

At the outset of the hearing, it was determined that the One Month Notice should be cancelled as the incorrect form was used. I find I do not need to consider the merits of the One Month Notice. Therefore, I cancel the One Month Notice and it has no force or effect.

#### Issue to be Decided

Should the Two Month Notice be cancelled?

#### Background and Evidence

The tenancy began on September 1, 2015. Rent in the amount of \$975.00 was payable on the first of each month. The parties disagree whether or not a security deposit was paid.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on June 1, 2022.

The reason stated in the Notice was that:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="checked" type="checkbox"/>	The rental unit will be 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).
Please indicate which close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse
<input type="radio"/>	The child of the landlord or landlord's spouse
<input checked="checked" type="radio"/>	The father or mother of the landlord or landlord's spouse

The details written in the Two Month Notice was that,

I need the place for my senior mother who will be living with us downstairs. She needs full occupations with a bathroom. My nephew will be also assiting us downstairs and living in the second bedroom.

The landlord's agent testified that the landlord's mother is 91 years of age and is currently sharing a room with the landlord's daughter who is 15 years old. The agent stated that they want to be able to move the landlord's mother into the basement as everything is on one floor.

The landlord's agent testified that the only reason why the One Month Notice states that it would be the landlord's nephew moving into the rental unit was because he would be the primary person and will be living in the second bedroom and helping to care for his grandmother who will be using the other bedroom. The agent stated that the landlord has difficulties with English and was being assisted by someone who did not fully understand.

The tenants testified that the landlord is not acting in "good faith" and has been trying to evict them. The tenants stated that the landlord had previously issued a Two Month Notice for Landlord's use of Property which they disputed, and a hearing was held on December 21, 2021. The tenants stated that the landlord wanted the property for their nephew and cousins to stay. Filed in evidence is a copy of the Decision.

The tenants testified that then the landlord issued the One Month Notice, again for the nephew to live in the rental unit and then this conflicted with the reason stated in the Two Month Notice.

### Analysis

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

When a tenant has filed to cancel a Notice and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two-part test as follows:

1. The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

In this case, I find the landlord has not issued the Notice in “good faith” for the following reasons.

On December 21, 2021, the parties were at a hearing. The reason the landlord had issued the Two Month Notice for Landlord’s Use of Property at that time, was because their nephew and cousins were coming to stay in the rental unit.

On March 31, 2022, less than three months later the landlord issued the One Month Notice again stating the reason for ending the tenancy was because their nephew will be moving into the basement.

On April 1, 2022, one day later, the landlord issued the Two Month Notice with the reason for ending the tenancy was because the rental unit will be occupied by the landlord’s mother, it also states that the nephew of the landlord will be assisting the landlord and living in the second bedroom.

While I accept the use of the Residential Tenancy Branch forms may be confusing to some people and the wrong form may be issued, such in this case the One Month Notice and a second notice to end tenancy, the Two Month Notice could be issued to correct that error.

However, even if I accept this was simply an error by the landlord, I find it is not reasonable that the reason for ending the tenancy would be different. Nowhere on the One Month Notice does it indicate that the primary reason for ending the tenancy was because the mother of the landlord would be residing in the rental unit, it only referred to the nephew moving into the basement.

The Two Month Notice was then issued stating the mother of the landlord would be living in the basement with the nephew. I find it more likely than not that the landlord has an ulterior motive and is the primary reason for ending the tenancy which is for the landlord’s nephew to live in the rental unit. Therefore, I find the Two Month Notice must be cancelled. The tenancy will continue until legally ended.

As the tenants was successful with their application, I find the tenants are entitled to recover the cost of the filing fee. I authorize the tenants a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord.

### Conclusion

The tenants' application to cancel the Notice, is granted. The tenants are authorized a onetime rent reduction of \$100.00 from a future rent payable to the landlord to recover the cost of the filing fee.

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: July 28, 2022

---

Residential Tenancy Branch