



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNL

### **Introduction**

This hearing dealt with the tenant's application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49.

The landlord's son, AD, translated for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

The tenant testified that they had trouble reading one of the documents in the landlord's evidentiary materials, which was a JPEG image of a typed letter. After describing the letter in detail to the tenant, the tenant confirmed that they did not take issue with the admittance of this document.

.

The tenant confirmed receipt of the 2 Month Notice dated February 27, 2022.

### **Preliminary Issue – Tenant's Application to Adjourn Hearing**

At the outset of the hearing, the tenant requested an adjournment. The tenant felt that the landlord had intentionally delayed the service of their evidentiary materials in an effort to deny the tenant the opportunity to properly respond. The tenant also testified

that they suffered from vision and physical disabilities, which made preparing for the hearing difficult. The tenant testified that they had attempted to apply for free legal assistance, but have yet to hear back.

The landlord opposed the tenant's adjournment request, stating that all documents were submitted within the required time period.

In considering this request for an adjournment, I must take into consideration the criteria established in Rule 7.9 of the *Rules*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

Based on the submissions of both parties I find that an adjournment of this matter was not justified nor necessary. I note that the landlord's evidentiary materials were served within the required time period, and that the tenant did receive and review these materials. Furthermore, although I note that the tenant does indeed suffer from visual and physical impairments that affect the tenant's ability to review documents and possibly prepare for a hearing, my observation was that the tenant was able to prepare both written submissions and evidence for this hearing, as well as testify on their own behalf.

Furthermore, I find that the landlord has a right to a timely resolution to this matter as it pertains to a 2 Month Notice that was served in February. I find that an adjournment would only delay the resolution of this matter, which would be prejudicial to the landlord as the effective date has passed.

I am not satisfied that an adjournment is necessary, and I advised both parties that I would proceed with the hearing as scheduled.

**Issues(s) to be Decided**

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2003. Monthly rent is currently set at \$585.00, payable on the first of the month. The current landlord purchased the property and took over this tenancy in June 2009.

The landlord served the tenant with a 2 Month Notice on February 27, 2022, with an effective move-out date of April 30, 2022, for the following reason:

- 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).

The landlord testified that their younger son, AD, wanted to move out as AD requires their own private space. AD is 23 years old, and works part-time while attending school. The landlord testified that their older son had already moved out at the same age, and that AD's daily lifestyle was disruptive to the family as AD often comes home late, and studies late as well. The landlord testified that moving to the rental suite would be the most financially feasible due to the rental market.

The landlord denies any other motives, noting that the previous conflict over noise was between the tenant and older son many years ago, and that the landlord had no knowledge of this until this application was filed. The landlord also denies that this was an attempt to increase the rent. The landlord testified that they were first time landlords, and were not aware of the legislation, and how rent increases were to be imposed. The landlord notes that the tenant had consented to the previous increases, and that rent has not been increased since January 2020. The landlord also notes that the tenant's rent was below market value for quite some time, and that the landlord could have exercised their right to impose year rent increases, but had not.

The landlord confirmed that the home did contain two rental units, and that the other suite of equivalent size was rented out to a couple on a month-to-month agreement.

The landlord testified that they had been living there approximately a year, and there was no way that they could end the tenancy for this couple. The landlord testified that the tenant's suite has more damage and requires repairs.

The tenant testified that they knew the other tenants, and they had in fact been living there for at least four to five years. The tenant testified that the market rent is triple what the tenant is paying, and the landlord wanted to renovate the suite to obtain more rent. The tenant notes that the other tenancy was also month-to-month.

### **Analysis**

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord states that their son intended to occupy the suite

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*"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 that they do not have an ulterior motive for ending the tenancy."*

As the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the landlord has not met their burden of proof to show that their son would be occupying this rental unit, and that is the only reason for ending this tenancy. Despite the explanation provided about why AD would be moving into this specific rental unit, I

find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy.

First of all, I acknowledge the landlord's response that the past disagreement took place some time ago, and was between the tenant and the older son. The older son does not live in the home anymore, and no longer assists the landlord with the tenancy matters. I find that this has no bearing on the landlord's decision to serve the tenant with the 2 month Notice. Furthermore, I am satisfied that the landlord provided a reasonable explanation for why photos of the rental unit were taken.

The issue that does, however, raise significant doubt, is the testimony about why the tenant's specific rental unit was chosen. Although the landlord testified that this specific unit would be the only option as the landlord could not possibly end the tenancy with the other tenants, and the tenant's unit required more repairs, I am not convinced that the landlord truly required this specific rental unit for occupation by their son. I find that the tenant is paying substantially much lower rent, and as noted by all parties, even with allowable rent increases, the rent still is significantly much lower than a comparable rental unit in the market. The landlord's testimony contained discrepancies and raised questions, such as why the tenant's specific unit was chosen over the other one that is occupied by a couple who is also on a month-to-month agreement. While the tenant recalls that the couple had moved in four or five years ago, the landlord testified that the other tenant had been there only a year. Regardless, the landlord failed to provide a reasonable explanation for why the other couple's tenancy could not possibly be ended in accordance with the *Act*, and why the tenant's specific unit was chosen. Furthermore, despite references to repairs and damage in the tenant's rental unit, I do not find this statement to be supported in evidence. As both units are of equal size, the only obvious difference is that the tenant is the tenant with longer tenure, and is therefore paying much lower rent.

Furthermore, I find that the landlord failed to provide specific details as to how AD's schedule is disruptive for the landlord (ie. Specifics of work or school schedule, layout of home). Although I recognize the desire of AD to move out on their own, and have their own private space, I find the explanations provided by the landlord lack detail, and fails to address the questions raised in this dispute—primarily of why the tenant's specific rental unit was chosen to satisfy this purpose.

I find that the landlord has not met their burden of proof to show that that the only reason for ending this tenancy is for the landlord's son to occupy the rental unit. Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The

landlord's 2 Month Notice, dated February 27, 2022, is hereby cancelled and is of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

**Conclusion**

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated February 27, 2022, is cancelled and is 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: July 05, 2022

---

Residential Tenancy Branch