



# 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 March 29, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 23, 2022 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing. The Property Manager and Landlord's daughter appeared at the hearing for the Landlord. The Property Manager called the Witness at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and Witness provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Property Manager confirmed receipt of the hearing package and Tenant's evidence and did not raise an issue with service. The Tenant confirmed receipt of the Landlord's evidence. The Tenant did raise an issue with the timing of service of an email sent to the Tenant on the date of the hearing; however, the Tenant acknowledged they read the email and were prepared to respond to it. I admitted the email because I found there was no prejudice to the Tenant in doing so.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all relevant evidence provided. 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 Landlord 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 November 14, 2019, and was for a fixed term ending November 13, 2020. The agreement has a vacate clause stating the Tenant must vacate at the end of the fixed term because "Owner or closed [sic] family member will use". Rent is \$4,500.00 per month due on the first day of each month.

The parties agreed the tenancy became a month-to-month tenancy November 13, 2020.

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 and the child of the Landlord or Landlord's spouse intend to occupy the rental unit.

The Property Manager testified that the Notice was sent to the Tenant March 26, 2022, by registered mail. The Tenant did not know when they received the Notice.

The Property Manager testified as follows in relation to the grounds for the Notice. The rental unit is a house, and the Tenant rents the entire house. The Landlord's daughter has graduated from university and lives in another city. The Landlord's daughter intends to move back to the rental unit and the Landlord and their spouse (the "Landlords") also intend to move back to the rental unit so the family can live together. The family currently lives apart but want to live together.

The Tenant submitted documentation showing the Landlords' daughter stating that the Landlords intend to sell the rental unit. I asked the Property Manager about this documentation. The Property Manager stated that the Landlords' daughter had no right to decide whether the rental unit would be put up for sale, and it was never the intention of the Landlords, who are the owners, to sell the rental unit. The Property Manager testified that the rental unit is the Landlords' only asset in Canada and the Landlords want to live in Canada.

The Tenant submitted documentation about the Witness attending the rental unit as a realtor. The Property Manager testified that the Witness is a friend of the Landlords and attended the rental unit to assess it for insurance purposes, not because the Landlords wished to sell the rental unit. The Property Manager testified that the rental unit was never listed on the market for sale.

I asked the Property Manager about the vacate clause in the tenancy agreement and why the Landlords did not move into the rental unit when the fixed term tenancy was over. The Property Manager testified that the Landlords have always intended to move back to the rental unit; however, the pandemic caused chaos, their daughter was still in university at the time and could not live at the rental unit and it was difficult to travel.

The Property Manager testified that the Landlords currently live in China and have been out of Canada for a couple of years. The Property Manager testified that the Landlords do not intend to move back to Canada until their daughter moves into the rental unit so that they have a place to live. The Property Manager testified that the Landlords do not yet have travel plans or flights booked because they are not sure when they will have the rental unit back.

The Landlords' daughter testified as follows. They currently live in another city and were going to university. Their tenancy agreement ends in July, so they intend to move into the rental unit at the end of July or start of August. The rental unit is a house with two floors. They do not know how many bedrooms the rental unit is, possibly five. They previously lived at the rental unit three or four years ago before university. It is only them and their parents, the Landlords, who intend to move into the rental unit. They previously lived with the Landlords at the rental unit three or four years ago. The Landlords intend to come back to Canada from China after the Landlords' daughter moves into the rental unit. The Landlords have been in China for two or three years and live there with their young son. The Landlords have not made travel arrangements yet.

I asked the Landlords' daughter about the communications in evidence between them and the Tenant about the Landlords selling the rental unit. The Landlords' daughter testified that they thought their parents, the Landlords, should sell the rental unit during the pandemic. The Landlords' daughter testified that they asked their parents, the Landlords, about selling the rental unit and the Landlords did not agree to this. The Landlords' daughter confirmed it is their position that they talked to the Tenant about selling the rental unit before talking to their parents, the Landlords, about this.

The Witness testified as follows. They have never had an agreement with the Landlord to sell the rental unit. The Tenant asked them if the Tenant could buy the rental unit and they told the Tenant the Landlord does not want to sell the rental unit because they want to come back and live in Canada. The Landlord did not ask them to view the rental unit in preparation for selling it. They attended the rental unit for insurance purposes.

The Landlord submitted the following relevant documentary evidence:

- An email from the Witness dated January 11, 2022, stating they asked the Landlord about selling the rental unit and the Landlord "has no intention to sell the house recently. The landlord will have the house for own use first."
- A tenancy agreement for the Landlord's daughter's current rental unit.

The Tenant testified as follows. The Landlord has repeatedly said they intend to sell the rental unit. The Landlords' daughter has said in text messages and emails that the Landlords intend to sell the rental unit. They have had conversations with two realtors, one of them being the Witness, about the rental unit being put up for sale. The Landlord intends to sell the rental unit.

The Tenant submitted the following relevant documentary evidence:

- A text message from the Landlord's daughter dated November 29<sup>th</sup> in response to the Tenant asking why the Landlord's daughter ignored their question about buying the rental unit. The Landlord's daughter responded, "...my parents...they are still considering about the price of property".

- A text message from the Landlord's daughter dated December 2<sup>nd</sup> stating, "...About buying the house, you can connect with the agent you talked before, he will discuss about selling house."
- An email from the Landlord's daughter dated March 10, 2021, stating the Tenant cannot stay in the rental unit until May 2022, "because we decided to sell this house recently...about the terms of sales, you can ask our agent [the Witness], here is his phone number..."
- An email from the Landlord's daughter dated March 12, 2021, stating, "we are planning to sell this house..."

### Analysis

The Notice was issued pursuant to section 49(3) of the *Residential Tenancy Act* (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 close family member and addresses the good faith requirement in section 49(3) of the *Act*.

The Landlord has 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.

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. I accept that the Notice was sent to the Tenant March 26, 2022, by registered mail. I find the Notice was served in accordance with section 88(c) of the *Act*. Pursuant to section 90(a) of the *Act*, the Tenant would be deemed to have received the Notice March 31, 2022. However, the Tenant disputed the Notice March 29, 2022, and therefore must have received the Notice prior to March 31, 2022. I find the Tenant disputed the Notice in time.

I am not satisfied based on the evidence provided that the Landlord has proven the grounds for the Notice.

I find the Tenant has submitted compelling evidence that the Landlords have intended to sell the rental unit in the past. I find the documentary evidence submitted by the Tenant calls into question the reliability and credibility of statements made by the Property Manager, Landlord's daughter and the Witness.

There is no direct evidence before me from the Landlords stating they intend to move into the rental unit. The only evidence of the intention of the Landlords before me is from other parties, being the Property Manager, the Witness and the Landlord's daughter. I do not find the evidence from these other parties sufficiently compelling to prove the grounds for the Notice. The Landlords have not submitted signed written statements or Affidavits setting out their intention to move into the rental unit. The Landlords did not call into the hearing to provide affirmed testimony about their intentions to move into the rental unit. I find the lack of direct evidence from the Landlords problematic in any event but particularly problematic when the Landlords currently live in another country and have for years.

I do not find the evidence of others, here the Property Manager, Witness and Landlord's daughter, as to the intention of the Landlords to be sufficiently compelling to prove the grounds for the Notice in the absence of direct evidence from the Landlords.

I also note that I do not find the testimony of the Landlord's daughter credible. The Landlord's daughter's testimony that it was them who thought the rental unit should be sold, their parents did not agree, and they talked to the Tenant about selling the rental unit before talking to the Landlord, who owns the rental unit, does not accord with common sense. I do not accept that the Landlord's daughter's version of events is accurate in the absence of some documentary evidence to support it. Further, the documentary evidence contradicts the Landlord's daughter's testimony because it shows a clear intention to sell the rental unit and the November 29<sup>th</sup> text message specifically refers to the Landlords considering the price of the rental unit. In the circumstances, I do not rely on the Landlord's daughter's testimony as compelling evidence of either their own intention, or that of the Landlords, in relation to the rental unit.

In summary, I find the Tenant has submitted compelling independent documentary evidence calling into question the intention of the Landlord in relation to the rental unit

and the Landlord has failed to provide compelling evidence to prove the grounds for the Notice. The Notice is therefore 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: July 19, 2022

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Residential Tenancy Branch