



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KENSON REALTY  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNL

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property.

The tenant, the owner of the rental unit, and an agent for the landlord attended the hearing. The landlord's agent and the tenant each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties did not agree that evidence had been exchanged. A good deal of time was spent at the commencement of the hearing to determine what had been exchanged, which resulted in a finding that the only evidence I would consider is a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property, by consent.

### Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 13, 2022 was issued in accordance with the *Residential Tenancy Act*, and in good faith?

### Background and Evidence

**The landlord's agent** testified that this 1-year fixed-term tenancy began on September 1, 2017 and was renewed by a new 1-year fixed term tenancy agreement each year, the last of which expired on August 31, 2022 and reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent has been increased over time, and is currently \$2,271.00 effective September 1, 2022 payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,050.00 which is still held in trust by

the landlord, and no pet damage deposit was collected. The rental unit is a townhouse in a strata complex containing over 15 units.

The landlord's agent further testified that on July 14, 2022 the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of property by registered mail, and a copy has been provided for this hearing. It is dated July 13, 2022 and contains an effective date of vacancy of September 30, 2022. The reason for issuing it states: 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 form contains boxes to check to indicate who will be occupying it, however none have been checked.

The landlord's agent testified that the owner has been living outside of Canada, and now that COVID is over, the owner has moved back to Canada, arriving on September 30, 2022. Since the tenant has not vacated the rental unit, the owner is now staying with friends. The rental unit will be occupied by the owner and husband and son. The landlord's agent has spoken with the tenant a number of times, whose last answer is that the tenant wants to defer moving out, however, the owner has been inconvenienced by this dispute.

The owner is aware of the consequences of failing to accomplish the stated purpose for ending the tenancy, which has been emphasized to the owner by the landlord's agent.

**The tenant** testified that the landlord sent an email to the tenant on June 14, 2022 about signing a new tenancy agreement. On June 18, 2022 the tenant asked for a copy after agreeing to a 1 year contract, and the landlord's agent said they'd send it in July, but changed their mind. Instead of sending the tenant a new tenancy agreement, the landlord sent a Two Month Notice to End Tenancy for Landlord's Use of Property. The tenant had already enrolled his child in school, and testified that the move will hurt the tenant's son.

When the tenant disputed the Notice he was asked by a previous agent of the landlord to cancel the hearing and then the parties would talk. The tenant asked for a new tenancy agreement, and the landlord's then agent said that the tenant had to cancel the hearing first. However, if the tenant had cancelled the hearing, the tenant would have lost the opportunity to dispute the Notice.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord's agents tried their best, gave proper notice to end the tenancy and tried to help when the tenant asked for a place to move to. The landlord's agent always

received the same answer; that if the tenant found a place, he would move. The tenant was also advised that he could move out early, but said he didn't find the right place.

If the result of this hearing is a finding in favour of the landlord, the landlord would be content with an effective date of vacancy of October 31, 2022.

#### SUBMISSIONS OF THE TENANT:

When the landlord asked for a new tenancy agreement and sent an email to the tenant to that effect, the tenant agreed, but the landlord never sent the new tenancy agreement for the tenant to sign.

The tenant was looking actively for a place to move to and went to 2 places which were not suitable.

#### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a notice to end the tenancy for landlord's use of property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the notice.

I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) and I find that it is in the approved form.

There is nothing in the evidence or the testimony to make any finding that the landlord is not acting in good faith. The landlord's agent testified that the landlord is well aware of the consequences for not using the rental unit for the landlord and family to reside in. The landlord's agent also testified that the owner returned to Canada on September 30, 2022 since the health rules regarding COVID-19 were relaxed, and I accept that, with no reason to not accept that.

I find that the landlord is acting in good faith, and the tenant's application to cancel the Notice is dismissed.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an Order of Possession in favour of the landlord. Since the landlord's agent submitted that the owner would be content with an effective date of

vacancy of October 31, 2022, I grant the Order of Possession effective at 1:00 p.m. on that date.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

The law also requires that a landlord is required to provide the tenant with compensation equivalent to one month's rent, which is often accomplished by the tenant paying no rent for the last month of the tenancy. In this case, the tenant has already paid rent for the month of October, 2022 and I order that the landlord provide such compensation to the tenant on or before the date that the tenancy ends.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on October 31, 2022.

I further order the landlord to provide the tenant with compensation equivalent to one month's rent on or before the end of the tenancy.

This order is final and binding and may be enforced.

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: October 07, 2022

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Residential Tenancy Branch