



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, OLC

### Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice or 2 Month Notice) issued by the landlord and an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Both parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenant's application and evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters-

Rule 2.3 states claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I will only consider the tenant's request to cancel the 2 Month Notice. The balance of the tenant's application is dismissed, with leave to re-apply. Leave to reapply is not an extension of any applicable time limit.

### Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

### Background and Evidence

This tenancy began on January 1, 2015 and monthly rent is \$800. I heard evidence that the various family members live in the residential property. The lower portion of the home contains two suites, one being occupied by the tenant. The landlord said that his sister, husband, children and parents live upstairs.

The evidence shows that the landlord issued the tenant the Notice on May 15, 2022, and the tenant confirmed receiving the Notice on May 15, 2022. The Notice listed an effective move-out date of July 31, 2022. Filed in evidence was a copy of the Notice.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the father or mother of the landlord or landlord's spouse.

The tenant's application was filed within 15 days after service allowed by the Act to dispute the Notice.

In his application, the tenant wrote the following:

*Ap 4: landlord text message about \$200 increase on my \$800 rent (25%) starting on June 1st April 5: I answered saying that it too much He said they haven't increase rent since I moved in and he said that I can understand. May2: I asked him RTB-7 Form May14: I got the Form not respecting 3 month notice May15 at 12:13PM, I sent a text message to request 3 month notice May15 about 1:40PM: He gave me the RTB-32&34 saying he doesn't want to increase anymore. He said his brother will move in*

[Reproduced as written]

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord stated his parents are currently living in the living room upstairs since earlier this year and that his sister and brother-in-law have lived upstairs since buying the home in 2012.

The tenant occupies the 1 bedroom downstairs suite, which the landlord's parents intended on occupying. Additionally, the landlord said that his brother and wife are coming in later this year and will be occupying the 2 bedroom suite downstairs.

The landlord said that he issued the 2 Month Notice when the tenant declined the rent increase.

The landlord confirmed that he did tell the tenant that they may sell the home and that the home has been listed for sale. As of the day of the hearing, the home was listed for sale, but would be removed that day.

The landlord did not file evidence.

Tenant's response –

The tenant said that she never saw the landlord's sister move in and when the landlord handed her the Notice, he said his brother was moving in.

The tenant submitted that the Notice was in response to refusing the \$200 rent increase, increasing the monthly rent from \$800 to \$1,000. The rent increase notice was filed in evidence, with a date of May 14, 2022.

The tenant filed text messages between the parties, which said, in the same text message, that the landlord was thinking about letting his parents move in and selling the home.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) of the Act states that 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.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Rule 6.6 provides that the *“standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed”*.

Residential Tenancy Policy Guideline 2 provides good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid their obligations under the Act.

Upon review of the Two Month Notice to End Tenancy dated May 15, 2022, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 88 of the Act.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the landlord submitted insufficient evidence to prove that the rental unit will be used for the stated purpose. The landlord confirmed, and the evidence shows, that the landlord was thinking about his parents moving in or selling the home. Additionally, the landlord said the 2 Month Notice was issued after the tenant refused the 25% rent increase.

I find this evidence is insufficient to show that the landlord's mother or father truly intended to move into the rental unit as a living accommodation for at least 6 months after the effective date of the Notice. The landlord cannot have both his parents move in for 6 months and sell the home at the same time.

As the landlord confirmed that the 2 Month Notice was issued the day after the tenant declined a 25% rent increase, I also find the 2 Month Notice was not issued in good faith and that the landlord had an ulterior motive.

As I have found that the landlord submitted insufficient evidence that his parents intended in good faith to occupy the rental unit as a living accommodation and that the Notice was not issued in good faith, I **ORDER** that the 2 Month Notice dated May 15, 2022, for an effective move-out date of July 31, 2022, is cancelled, and it is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

#### **Cautions for the landlord –**

I caution the landlord that he may not increase the monthly rent except in the amounts allowable by the Act and the Residential Tenancy Regulations. The attempted rent increase of 25% was not allowable and therefore, the monthly rent remains at \$800 until a notice of rent increase is issued that complies with the Act and Regulations.

#### **Conclusion**

The tenant's application has been granted as I have ordered the 2 Month Notice cancelled and it is of no force or effect.

The tenancy will continue until ended in accordance with the Act.

The remaining claim on the tenant's application has been dismissed, with leave to reapply.

The landlord has been issued cautions regarding his notice of a rent increase served to the tenant.

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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 12, 2022

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Residential Tenancy Branch