



# Dispute Resolution Services

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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 49 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 (the "2 Month Notice").

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 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 and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this periodic tenancy is \$1,100.00 payable on the first of each month. The rental unit is a basement suite in a detached home with the landlord residing in the other portion of the building with their family.

The landlord issued a 2 Month Notice dated June 1, 2022 with an effective date of August 1, 2022. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or their family member, a child of the landlord or their spouse.

The tenants filed their application for dispute resolution on June 15, 2022. While the tenants said they feel the tenancy has run its course and are willing to vacate they have not yet found alternate accommodations and were not prepared to enter into settlement discussions to agree to a fixed date to end the tenancy.

I note that the tenants' failure to secure alternate accommodations is not solely attributable to their efforts but also indicative of the lack of rental housing available in the province.

The landlord testified that their child is graduating post-secondary school and desires additional space and privacy. The landlord said their intention is to have their child move into the rental suite which has its own entrance and is self-contained while being on the same property as the landlord. The landlord provided no documentary evidence in support of their submissions and gave little details such as the institution their child was graduating from, what their post-graduation plans were, whether they were seeking employment in the area or the current living arrangements in their unit.

### Analysis

Section 49(8)(a) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property issued under subsection (3) the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence that the 2 Month Notice was received on June 1, 2022 and the tenants filed their application for dispute resolution on June 15, 2022. I therefore find that the tenants are within the time limits provided under the *Act* to dispute the 2 Month Notice.

When a tenant files an application to dispute a Notice to End Tenancy, the landlord bears the evidentiary burden on a balance of probabilities to prove the grounds for the 2 Month Notice.

The landlord testified that they intend for their child to occupy the rental unit but provided no documentary evidence in support of their submissions and little cogent details. The landlord did not provide the name of the post-secondary institution that their child attends, provided no certificate showing their enrollment and failed to provide anything more than vague testimony so deficient in details as to be unbelievable.

Based on the paucity of their evidence, I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenants' application to cancel the 2 Month Notice.

The 2 Month Notice of June 1, 2022 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The tenants are successful in their application. The 2 Month Notice is cancelled and of no further force or effect.

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: November 1, 2022

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Residential Tenancy Branch