



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property issued on May 29, 2022, and a corrected Two Month Notice Tenancy for Landlord’s Use of Property (the “Notices”) issued on May 31, 2022.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

There was no issue with the service of the Notices before me. Therefore, the landlord’s friend was not required to give testimony on this issue.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notices be cancelled?

### Background and Evidence

The tenancy began on March 1, 2021. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenant paid a security deposit of \$625.00.

The parties agreed that the Notices were served on the tenant. The reason stated in the Notice was that:

- 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's agent testified that the landlord wants the rental unit back for two reasons. The first reason is that the landlord's husband is coming back, and they want to use the space for their own purposes.

The landlord's agent testified that the second reason for ending the tenancy is that there has been two hearings with the tenant before the Residential Tenancy Branch in the last year. The agents stated that the first hearing the tenant's application to cancel the notice to end tenancy was granted, and the second hearing to end the tenancy for cause has been ongoing for over half a year and has been adjourned multiple times and is to reconvene on November 9, 2022.

The landlord's agent testified that the tenant is constantly complaining about noise within the rental unit, which is just normal household noise of the landlord's family, and the landlord has had enough of this, and the landlord just wants to live a peaceful life in their home.

The advocate for the tenant stated that the landlord has not issued the Notice in "good faith". The advocate stated that within the first eight months of the tenancy there had been some noise issues and the landlord-tenant relationship soured. The advocate stated that since the issue of noise was raised the landlord has just wanted the tenant to move out.

The advocate for the tenant stated following the noise complaints of the tenant the landlord had issued the tenant a One Month Notice for Cause on October 9, 2021, and the hearing was held on February 28, 2022, and decision issued on March 2, 2022, cancelled this notice to end tenancy due to a service issue.

The advocate for the tenant stated that the landlord reissued the One Month Notice to End Tenancy for Cause (the "One Month Notice") on February 28, 2022, and the hearing commenced on May 24, 2022, and was unable to complete due to insufficient time and was adjourned. The advocate stated that on May 25, 2022, they received notification from the Residential Tenancy Branch of the reconvene hearing, which was scheduled for September 20, 2022.

The advocate for the tenant stated that the landlord issued the first of the Notices on May 29, 2022, four days later, in the attempt to end the tenancy earlier. The advocate submits this strongly implies that the Notices were given because the landlord did not like the delay in the hearing process regarding the One Month Notice, and not for the reasons within the Notices.

The advocate for the tenant stated that when the rental unit was advertised the landlord wanted a minimum of a one-year lease as they wanted a longer-term tenant and it makes no sense that they now want the rental unit back for their own use.

The advocate for the tenant stated at the hearing on September 20, 2022, when the landlord was asked by the Arbitrator why they had issued these subsequent Notices, the response of the landlord was that they issued the Notices because of the unreasonable delay.

The advocate for the tenant stated that the landlord and their one child live in an extremely large home beautiful home that is 9500 sq foot, which consist of 5 bedrooms, 5 bathrooms, a swimming pool and it is not believable that the landlord or their husband have any intent of occupying this small separate 500 square foot unit that the tenant resides.

The witness for the tenant stated that they were at the hearing on September 20, 2022, that was subject to the One Month Notice and when the Arbitrator asked why the landlord issued the subsequent Notice and the landlord responded that the first notice was not working.

The advocate for the tenant stated that the Notices were issued as a plan B to end the tenancy.

The tenant testified that since they originally made some complaints to the landlord regarding noise, the landlord just keeps asking them to move-out. The tenant stated they have not complained since December 2021, and there are no current issues.

The landlord's agent argued that the landlord cannot have the same issues continue over such a long period of the time, as the landlord has the rights to quiet enjoyment and it entitled to use their home without the tenant's constant complaining. The agents stated that the tenant is oversensitive to any normal household noise and the landlord just wants to take over back the rental unit for their private use.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) of the Act 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.

When a tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two-part test as follows:

1. The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

The evidence of the landlord was that their husband is coming back to the family home which is a large home that consists of five bedrooms. There was no evidence presented by the landlord that the landlord's husband is planning to live in this separate unit, or any evidence given on how they plan to occupy the space. As an example, to turn it into a recreational room.

Further, the landlord and tenant have been in an ongoing hearing because the landlord issued the tenant a One Month Notice, which has yet to be proven. That hearing, which is before a different Arbitrator commenced on May 24, 2022, was adjourned to September 20, 2022, and is scheduled to reconvene in early November 2022.

The landlord issued the Notices before me, on May 29 and May 31, 2022, with an effective vacancy date of August 31, 2022. This was within days after the May 24, 2022, hearing being adjourned, which given the timing of the Notices is questionable because

if the landlord truly believed they had grounds to end the tenancy, I find it highly unlikely they would have issued the Notices, that are subject to this dispute.

I find it more likely than not that the Notices were not issued in good faith and were simply issued in the attempt to avoid the ongoing hearing process, which I can accept is frustrating to both parties; however, no fault of the tenant. I find it more likely than not that the Notices were issued by the landlord to make sure they get rid of what they have determined to be a bothersome tenant as the landlord does not like the tenant complaining.

Based on the above, I find the Notices must be cancelled, I am not satisfied that the landlord truly intends to occupy the premises and I am satisfied that there is an ulterior motive which is to avoid the ongoing hearing process. Therefore, I grant the tenant's application and the Notices are cancelled. The tenancy will continue until legally ended under the Act.

Since the tenant was successful with their application, I authorize the tenant a onetime rent reduction in the amount of **\$100.00** from a future payable to the landlord to recover the cost of the filing fee.

### Conclusion

The tenant's application to cancel the Notices is granted. The tenant is authorized a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord to recover the cost of the filing fee.

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 2, 2022

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Residential Tenancy Branch