



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, LRE, LAT, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlords Use of Property (the 2 Month Notice) pursuant to section 49;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed

with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issue – Two Month Notice to End Tenancy for Landlords Use of Property

The tenant submits that the notice was invalid because the time given to him is more than two months. The notice was issued on September 3, 2022 with an effective date of December 1, 2022. The tenant submits that this invalidates the notice. Section 53 of the Act addresses the issue as follows:

#### **Incorrect effective dates automatically changed**

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45

(3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

Applying the above, the correct effective date of the notice is November 30, 2022. This was explained to both parties, and each indicated that they understood.

A further issue was whether there is one unit or two units in the subject property, the landlord issued the notice to unit "A" as was noted on postings from the previous owner, however, both parties agreed that there is only one unit and that there is no need for the "A" suffix to proceed the civic address and that the notice is in reference to the subject

property where the tenants live, and both parties wished to have a hearing addressing whether the tenancy continues or ends. The hearing proceeded and completed on that basis on this date.

### Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Should an order be made to set conditions or restrict the landlords access to the property or unit?

Should an order be made to allow the tenant and his guests to have access to the property or unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The landlord gave the following testimony. The tenancy began on or about May 1, 2018. Rent in the amount of \$1200.00 is payable in advance on the first day of each month. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on September 3, 2022 for the following reason:

*The rental unit will be occupied by the landlord or the landlord's spouse*

The landlord testified that he purchased and took possession of this property on September 1, 2022. The landlord testified that he originally purchased the home for investment purposes, however, as things have drastically changed with the economy, he has decided to move into this home. In addition, the landlord testified that the unit is very close to several construction projects that he has on the go and would cut his commute down substantially. The landlord testified that he fully intends to move into the home and will not be re-renting it.

CL gave the following testimony. CL testified that he thinks the landlord is not going to move into the home and that he will be re-renting as soon as he moves out. CL testified that the landlord does not respect tenant's rights and has been breaching them on a continuous basis. CL testified that he would move on if given the appropriate amount of time but is unhappy with the way the landlord has gone about this whole process. CL testified that the landlord has come onto the property illegally and without proper notice on numerous occasions.

## Analysis

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 tenant's claim and my findings around each are set out below.

The relationship between the parties is an acrimonious one. Each party accused the other of not telling the truth. It's also worth noting that the tenant stated that the landlord was "cavalier" in his attitude towards the tenant's rights and was aggressive and abusive. However, the landlord provided text messages between the parties that clearly show that the tenant was often antagonistic towards the landlord and used aggressive profanity laced language with the continual threat of going to the "rental board". There is insufficient evidence before me that the landlord was harassing or threatening as claimed by the tenant.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

*Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.*

*A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:*

*a Notice to End Tenancy at another rental unit;*

*an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or*

*a local government document allowing a change to the rental unit(e.g., building permit) and a contract for the work.*

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End*

*Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.*

The landlord gave clear concise and credible testimony. He provided details as to the logistical and financial benefits for him to move to this location as he has several projects nearby and that with the changing economic environment, it would provide financial stability to move into the subject unit. As part of the landlord's documentary submission, he outlined that he was fully aware of section 51 of the Act and that he must use the property for the stated purpose for six months or could be subject to paying 12 months of rent to the tenant as compensation.

Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The Notice remains in full effect and force, the landlord is granted an order of possession for 1:00 p.m. on November 30, 2022.

### Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenant's application is dismissed in its entirety without leave to reapply.

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 17, 2022

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Residential Tenancy Branch