



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, AAT, AS, OLC, OT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant July 12, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated June 30, 2022 (the “Notice”)
- For an order that the Landlords allow access to the unit
- To be allowed to assign or sublet the rental unit
- For an order that the Landlords comply with the Act, regulation and/or the tenancy agreement
- For another issue not listed related to outdoor lights

The Tenant and Landlords appeared at the hearing. The Landlords called E.K. as a witness at the hearing. E.K. was not involved in the hearing until required. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and dismiss the remaining requests because they are not sufficiently related to the dispute of the Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlords confirmed receipt of the hearing package and Tenant's evidence on September 02, 2022.

The Tenant testified that they did not receive the Landlords' evidence. However, it was clear the Tenant had received some of the Landlords' evidence. I told the Landlords they must refer to the documentary evidence they are relying on during the hearing and told the Tenant to let me know if they do not have the documentary evidence relied on. During the hearing, the Landlords relied on two documents, both of which the Tenant confirmed receipt of.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

#### Issue to be Decided

1. Should the Notice be cancelled?

#### Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started November 01, 202 and was for a fixed term ending November 01, 2021. The tenancy then became a month-to-month tenancy.

The Notice was submitted. The grounds for the Notice are that the rental unit will be occupied by the father or mother of the landlord or landlord's spouse. The effective date of the Notice was August 31, 2022. The Tenant did not take issue with the form or content of the Notice when asked.

The parties agreed the Notice was served on the Tenant, and received, June 30, 2022.

The Landlords testified as follows. Landlord K.K.'s mother, E.K., is moving into the rental unit. The Landlords own two adjoining properties with cottages on them. The Landlords live in one of the cottages. The rental unit is another cottage on the properties. E.K. has been wanting to move into the rental unit for a long time now. E.K. currently lives in another city and has set up a dentist and vet in the area of the rental unit. Invoices from the dentist and vet are in evidence. E.K. is selling their home in the other city and wants to move into the rental unit to be closer to the Landlords. E.K.

intends to move into the rental unit if the Notice is upheld regardless of whether E.K.'s house in the other city sells.

E.K. testified as follows. E.K. moved from another area of the province to their current location, which is not working out. E.K. wants to be closer to their children and wants to move into the rental unit. E.K. and the Landlords have been talking about E.K. moving into the rental unit for about a year and this would allow E.K. to help the Landlords out and be closer to E.K.'s grandchildren. E.K. wants to move into the rental unit rather than other cottages on the property because it is the furthest from the road, is quieter, it has a view, other cottages are too small and E.K. likes the rental unit. E.K. is in good shape and does not think access to the rental unit will be an issue for them. E.K. has a dog that has had health issues recently. It has been hard to get a vet in E.K.'s current city and so they already go to the area of the rental unit for their vet and dentist.

The Tenant testified as follows. The Landlords have ulterior motives for issuing the Notice. The Tenant understood the rental unit would be long-term accommodation for them. Having long-term, stable accommodation was important for the Tenant because they moved their business to the area of the rental unit and needed time to establish it. One year after the start of the tenancy, the Landlords' niece moved into one of the cottages on a short-term basis. The Landlords' niece still lives in the cottage. The Tenant having to move will be detrimental to the Tenant whereas the Landlords' niece could easily move. The Tenant does not understand why E.K. needs the rental unit versus another cottage on the property. The Landlords' niece has had issues with the Tenant and Tenant's guests. The Landlords would bring addendums to the Tenant to sign restricting the Tenant's rights on the property. After the Tenant declined to sign one of the addendums, the Landlords issued the Notice. The rental unit has bad access whereas the middle cottage where the Landlords' niece lives has better access. Dogs are not allowed on the property and E.K. has a dog.

The Tenant provided written submissions about their dispute of the Notice, correspondence authored by the Tenant and an email from the Landlords.

In reply, the Landlords testified as follows. There was no promise of a long-term tenancy at the start of the tenancy as is reflected in the tenancy agreement. The person living in the middle cottage is not their niece and the cottage does not work for E.K. because it is half the size of the rental unit and does not have a kitchen. Access to the rental unit is fine and a non-issue.

The Landlords sought an Order of Possession effective 10 days after service on the Tenant.

### Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) 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.

The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I find the Tenant received the Notice June 30, 2022. The Application was filed July 12, 2022, within time.

Pursuant to rule 6.6 of the Rules, the Landlords have the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

RTB Policy Guideline 2A addresses the good faith requirement in section 49(3) of the *Act*.

I am satisfied based on the evidence provided that E.K. intends in good faith to move into the rental unit. The Landlords testified that this is the case. E.K. attended the hearing and testified that this is the case. I did not have any concerns about the reliability or credibility of the Landlords' or E.K.'s testimony. The Landlords provided two invoices showing E.K. is using veterinary and dental services in the area of the rental unit. I am satisfied based on the testimony of E.K. that they have turned their mind to their ability and desire to live in the rental unit. I find the Landlords have met their onus to prove the grounds for the Notice.

I note that the Tenant has not submitted compelling evidence calling into question the grounds for the Notice. I emphasize that it is the Landlords' onus to prove the grounds for the Notice. However, I do find it relevant that the Landlords have provided sufficient evidence to prove the grounds for the Notice and the Tenant has not provided evidence that overcomes or calls into question the Landlords' evidence. I do not find there is any compelling evidence of the Landlords having an ulterior motive for issuing the Notice. Further, I do not find that there is an equivalent cottage on the property that E.K. could

move into because the Tenant acknowledged someone still lives in the middle cottage. It is not for me to decide whether the Landlords should have E.K. move into the rental unit or another cottage. This is up to the Landlords to decide. E.K. has provided reasons they want to move into the rental unit and the Landlords have the right to take back possession of the rental unit for E.K. to live in.

I acknowledge the comments of the Tenant about the effect moving will have on them; however, this is not a factor I can consider on the Application which is about whether the Landlords had grounds to issue the Notice. I find the Landlords did have grounds to issue the Notice.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

I uphold the Notice and dismiss the dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* requires me to issue the Landlords an Order of Possession given I have upheld the Notice, dismissed the dispute of the Notice and found the Notice complies with section 52 of the *Act*. The Landlords are issued an Order of Possession effective 10 days after service on the Tenant.

### Conclusion

The Landlords are issued an Order of Possession effective 10 days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 06, 2022

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Residential Tenancy Branch