



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL  
                             OPL, FFL

### Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlord. The tenants have applied for an order cancelling a notice to end the tenancy for landlord's use of property. The landlord has applied for an order of possession for the landlord's use of the property and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing with a person assisting. Both tenants also attended. The parties each gave affirmed testimony, and the landlord called 2 witnesses who also gave affirmed testimony. Legal Counsel for one of the witnesses also attended, but observed only and did not take part in the hearing. The parties were given the opportunity to question each other and the witnesses.

The landlord indicated that he has received evidence from the tenants, and has provided the tenants with all of the landlord's evidence. That was not disputed by the tenants, and all evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property dated September 30, 2022 was given in accordance with the *Residential Tenancy Act* and in good faith?

### Background and Evidence

**The landlord** testified that he purchased the rental unit on September 28, 2022. A copy of a tenancy agreement has been provided by both parties for this hearing showing that

this month-to-month tenancy began on October 1, 2022, and the landlord testified that the tenants still reside in the rental unit. Rent in the amount of \$3,200.00 is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On September 11, 2022 the previous owner collected a security deposit from the tenants in the amount of \$1,600.00 which is still held in trust by the current landlord, and no pet damage deposit was collected.

The landlord further testified that on September 30, 2022 the landlord and the landlord's nephew attended the rental unit and posted to the door a Two Month Notice to End Tenancy for Landlord's Use of Property. The landlord has provided the first page only of the 4-page form and it is dated September 30, 2022 and contains an effective date of vacancy of November 30, 2022. The reason for issuing it states: 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), specifying the landlord or the landlord's spouse.

The landlord testified that he and his wife, 2 daughters, his son and a nephew will occupy the rental unit. The landlord currently lives in a 1 room basement suite with a living room. When the contract of purchase was signed, the tenancy was a month-to-month, and the landlord could end the tenancy.

**The landlord's first witness** (GS) testified that he had a realtor relationship with the purchaser, but no relationship with the previous landlord.

The previous landlord asked if the purchaser would allow the existing tenant to stay for 3 months, but the purchaser denied the request. Based on that, a Two Month Notice to End Tenancy for Landlord's Use of Property is legal because the tenancy is on a month-to-month basis.

The tenants indicated that the tenancy agreement was fraudulent and that the page that shows that it is a month-to-month tenancy was incorrect, that it was for a 1 year lease and requested more time to move out.

**The landlord's second witness** JG) testified that he sold the house to the purchaser in September last year. There was never a fixed term, but the rental unit was rented on a month-to-month basis. The purchaser did not ask for vacant possession, and the witness told the purchaser that it is a month-to-month tenancy so the purchaser would have to give notice to the tenants to vacate.

**The first tenant** (GS) testified that the tenancy agreement was signed on September 25, 2022 and the tenants paid \$1,600.00 in advance on September 11, 2022. The parties verbally agreed that the term was for 1 year. A copy of a text message from the landlord has been provided for this hearing indicating that the landlord at the time would put in the lease that it was for a 1 year term. The tenant asked for a copy of the tenancy agreement, but the landlord didn't send it. The tenant asked why the landlord didn't send a copy but the landlord didn't respond. The tenants received a copy from the new landlord.

The tenant is a cancer patient and made it clear that the rental unit was needed for 1 year, not a few months. Then the landlord sold the property without telling the tenants that he intended to sell. The tenant believes the landlord switched the page.

The tenants have provided a copy of the first 2 pages of the Two Month Notice to End Tenancy for Landlord's Use of Property.

**The second tenant** (EK) testified that the tenancy agreement was signed for a 1 year term, but when the tenants received a copy, it shows month-to-month and the tenants believe that page has been changed. The tenants would not have signed a month-to-month agreement due to cancer treatments and hospital visits.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in that Notice.

I accept the undisputed testimony of the landlord that he lives in a 1 room basement in the rental home with a living room, and intends in good faith to move into the rental unit with his family.

The *Residential Tenancy Act* specifies that a notice to end a tenancy given by a landlord must be in the approved form. In this case, the landlord has only provided a copy of the first page of the 4-page form, and the tenants have provided the first 2 pages only. Therefore, I cannot be satisfied that the Notice given is in the approved form, and I cancel it. The tenancy continues until it has ended in accordance with the law.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the \$100.00 filing fee.

Conclusion

for the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

The Two Month Notice to End Tenancy for Landlord's Use of Property dated September 30, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

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: January 31, 2023

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Residential Tenancy Branch