



# 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 an Application for Dispute Resolution by the tenant(s) filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on August 18, 2022.

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

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.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on March 1, 2018. Rent in the amount of \$1,200.00 was payable on the first of each month. The tenant paid a security deposit of \$600.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on October 31, 2022. Filed in evidence is a copy of the Notice.

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 child of the landlord or landlord's spouse.

The landlord's agent testified that the landlord purchased the property in June of 2022, which they took possession on August 18, 2022.

The landlord's agent testified that they are the son of the landlord and live with their parents on the main floor of residence. The landlord's agent stated that the basement consists of two very small units which one is 280 sq feet and the other 360 sq feet which have an adjoining door that goes between the two units.

The landlord's agent testified that their original plan was to live on campus as they were accepted into a professional university program; however, on July 13, 2022, they were informed by the university that they would not get housing and that they were 5,745 on the waitlist. Filed in evidence is a copy of the email showing the landlord's son did not get housing and was on a long waitlist.

The landlord's agent testified that they are planning to combine the space of the two rental units for them to live with their fiancé and have their own privacy away from their parents as they are an adult of 21 years. The landlord's agent stated that one area will be designated as their study and the other will be used their primary living area.

The tenant testified that when the landlord entered into the contract to purchase the property they were told by the owner that their tenancy would continue with the new purchaser.

The tenant testified that on August 18, 2022, when the new purchaser, their child, and realtor attended as they had taken possession of the property the landlord was upset because the garage had items of both tenants in it. The tenant stated that they were willing to negotiate the removal of their items. The tenant stated that the landlord did not do their due diligence when they purchased the property as they did not read the

tenancy agreements. The tenant stated that it was the next day August 19, 2022, they received the Notice. The tenant stated this was not a discussion on August 18, 2022.

The tenant testified that the landlord would have to do extensive renovation to combine the two rentals as they would have decommissioned one of the kitchens and remove walls. The tenant acknowledged that there is an interior door joining the two units and even if combine the total space would be small.

The landlord's agent responded that when they took possession of the property on August 18, 2022, they had many issues as the seller and given them false information regarding the sale. The landlord's agent stated they had intended to give the tenant the Notice on August 18, 2022, the date it was issued; however, it was not served because of the issues they had. The landlord's agent stated this has nothing to do with storage and they wanted to be able to use the rental unit for their own use.

### Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the rental unit will be occupied by the child of the landlord.

The landlord entered into an agreement to purchase the property in June 2022, with a possession date of August 18, 2022. At that time the landlord's adult child was accepted into university and had applied for housing. On July 13, 2022, housing for the landlord's child was not approved and they had been waitlisted.

On August 18, 2022, the date the landlord took possession of the property they had issued the Notice, which was not served upon the tenant until August 19, 2022. While the tenant raises issues with the landlord's due diligence when purchasing the property; however, even if the landlord should have been aware of the issues of storage, that does not impact the landlord's right to end the tenancy when they want to use the property for their own use. This does not lead me to believe there is an ulterior motive

for ending the tenancy, such as ending the tenancy so they can re-rent the premises for a higher rent.

Further, I find it is reasonable given the circumstances of the landlord's adult child not receiving housing, their age and their relationship, that they would want to have their own separate living space from their parents. Clearly that was the intent of the landlord's child when they applied for university house in the first place, which was not given.

While I accept there have been two different rental units given notice to end tenancy; however, clearly both rental units even when combined is less than 700 sq feet. I find it is not unreasonable for the landlord's child and their fiancé to use both spaces for their own purposes. Further, the rental units have a joining interior door, making access to both units easily accessible.

I find the Notice issued on August 18, 2022, has been proven by the landlord and complies with section 52 of the Act, I find the Notice is valid and enforceable.

I dismiss the tenant's application to cancel the Notice. Although the tenancy legally ended on the effective date of the Notice; however, the landlord's agent stated that they would agree to give the tenant until February 13, 2023, to vacate. Therefore, I find the tenancy will end on February 13, 2023, in accordance with the Act.

Since I have dismissed the tenant's application, I find that the landlords are entitled to an order of possession effective **February 13, 2023, at 1:00 P.M.**, pursuant to section 55 of the Act. This order must be served on the tenant and may be filed in the Supreme Court. Thea **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant's application to cancel the Notice, is dismissed. The landlord is granted an order of possession.

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 25, 2023

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Residential Tenancy Branch