



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant August 02, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 20, 2022 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing. L.D. appeared at the hearing for the Landlord. 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.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence and L.D. confirmed receipt of these and confirmed there are no service issues.

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

### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started May 08, 2022.

The Tenant submitted the first two pages of the Notice. The grounds for the Notice are stated as follows:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	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).
Please indicate which close family member will occupy the unit.	
<input type="radio"/>	The landlord or the landlord's spouse
<input checked="" type="radio"/>	The child of the landlord or landlord's spouse
<input type="radio"/>	The father or mother of the landlord or landlord's spouse
<input type="checkbox"/>	The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The parties agreed the Notice was served, and received by the Tenant, July 20, 2022. However, the Tenant testified that they only received what was submitted as evidence which is the first two pages of the Notice. L.D. testified that they served all four pages of the Notice on the Tenant.

L.D. testified that the Landlord, their father, currently lives in a separate residence above the rental unit and wants to also occupy the rental unit which is one bedroom in a three-bedroom basement suite.

The Tenant disputed that the Landlord intends to occupy their room in the basement suite and testified that the rental unit is for sale.

In reply, L.D. advised that the Landlord sold the rental unit December 20, 2022, and therefore has not owned the rental unit since this date.

## 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.

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. I find the Tenant received the Notice July 20, 2022, and disputed it August 02, 2022, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I cancel the Notice for two reasons.

First, I am not satisfied based on the evidence provided that all four pages of the Notice were served on the Tenant. The parties disagreed about this. There is some evidence to support the Tenant's position because the Tenant uploaded the first two pages of the Notice and testified that this is what they received. In contrast, the Landlord has not submitted any evidence of service to support L.D.'s testimony. I accept the Tenant's position. I find the Notice does not comply with section 52 and 49(7) of the *Act* because only two pages were served and therefore the Notice is not in the approved form as required.

Second, I find the Landlord has failed to prove the grounds for the Notice which are that the child of the Landlord or Landlord's spouse intends to occupy the rental unit. L.D. testified that the Landlord intends to occupy the rental unit, which does not accord with the grounds for the Notice. I find the difference between the grounds for the Notice and L.D.'s testimony problematic for two reasons. First, the Landlord has simply failed to prove their child or their spouse's child intends to occupy the rental unit because L.D. did not even take this position at the hearing, L.D. said the Landlord intends to occupy the rental unit. Second, I find that the discrepancy between the grounds for the Notice and the testimony of L.D. calls into question the truthfulness of L.D.'s testimony.

I also note that, even if the Notice stated that the Landlord intended to occupy the rental unit, I would not have upheld the Notice for the further reason that I have no evidence before me from the Landlord themselves about their intention in relation to the rental unit.

Given the above, I cancel the Notice. This tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

### Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment as reimbursement for 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 *Act*.

Dated: January 10, 2023

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Residential Tenancy Branch