



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, FFT, CNL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed on September 10, 2022, under the *Residential Tenancy Act* (the “Act”) for an order to have the landlord comply with the Act, and to recover the cost of the filing fee.

On January 9, 2023, the tenants amended their application to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property, (the “Notice”) issued on August 28, 2022, which was delivered in person on that date.

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

### Issues to be Decided

Should the Notice be cancelled?  
Should the landlord be ordered to comply with the Act?

### Background and Evidence

The tenancy began on November 11, 2010. Rent in the amount of \$2,150.00 was payable on the first of each month. A security deposit of \$1,000.00 was paid by the tenants.

The tenant testified that they received the Notice on August 28, 2022. The tenant acknowledged the effective date within the Notice was October 31, 2022, and did not dispute the Notice until January 9, 2023.

The landlord submits they were not reinstating the tenancy and issued receipts for use and occupancy.

## Analysis

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

Under section 49(3) of the Act the landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord's intends in good faith to occupy the rental unit. I have reviewed the Notice filed in evidence by the tenant; I find the Notice complies with section 52 of the Act.

Under section 49(8)(a) of the Act a tenant may dispute the Notice within 15 days after the date it was received. The tenants received the Notice on August 28, 2022, I find the tenants last day to file their application was on September 12, 2022.

Under section 49(9) if the tenant received a notice under this section does not make an application for dispute resolution in accordance with subsection (8) the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, October 31, 2022, and must vacate the rental unit.

Under section 66(1) of the Act the director may extend a time limit established by this Act only in exceptional circumstance. **Under section 66(3) of the Act the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.**

In this case, the tenant acknowledged they received the Notice on August 28, 2022, and did not dispute the Notice until January 9, 2023, which is after the effective date within the Notice by amending their application. I find I cannot grant or consider the tenants request to cancel the Notice as this is contrary to section 66(3) and section 49(9) of the Act. **I find the tenancy legally ended on October 31, 2022**, and the tenants are overholding the rental unit. Therefore, I dismiss the tenants' application to cancel the Notice.

As I have dismissed the tenant's application, I find the landlord is entitled to an order of possession pursuant to section 55 of the Act. The landlord at the hearing stated that the tenants delay in vacating the premises is causing them hardship; however, they will give the tenants until February 8, 2023, to vacate.

I find that the landlords are entitled to an order of possession effective **February 8, 2023, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlords.

As I have ordered the tenancy has legally ended, I find it appropriate to dismiss the tenants' application to have the landlord comply with the Act, as this would only be necessary if the tenancy was ongoing, which it is not.

### Conclusion

The tenants' application and amended application is dismissed without leave to reapply.

The landlords are 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 27, 2023

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Residential Tenancy Branch