



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

On January 3, 2023, the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 27, 2022.

The Tenant and Landlords attended the hearing. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

The parties confirmed that they had exchanged the documentary evidence before me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord and Tenants testified that the tenancy began in April 2018 and is on a month-to-month basis. Rent in the amount of \$1,000.00 is to be paid to the Landlord by the first day of each month. There was no security deposit required or paid. There is no tenancy agreement in writing prepared by the Landlord.

At the time the Tenants moved into the rental unit, the residential property was owned by the Tenants' grandmother. The Landlord who attended the hearing, is the new owner of the residential property that was transferred to her in January 2022. The Tenants continue to pay rent to their grandmother rather than to the new owner/ Landlord. The Landlord stated that she decided to leave the rent payment situation the way it was.

The Tenants acknowledged that the Landlord present at the hearing is the owner of the residential property. The Tenants stated that they pay their own electricity bills and internet bills and stated that the low rent is due to a bit of family generosity; however, it was previously rented to a family friend for a low rent of \$1,000.00 per month.

The Landlord stated that the previous monthly rent for the family friend was \$1,200.00 per month.

I have considered whether or not the living arrangement is a residential tenancy under the Act or licence to occupy situation based on family generosity. I find that the Tenants have exclusive possession of the residential property as they are not sharing a kitchen or bathroom with the owner. I find that the Tenants pay rent each month, and the amount of rent is similar to the amount a previous tenant was paying. I find that the Tenants have utility services in their own name and make their own payments. While a security deposit was not required, the parties are family and the non requirement of a deposit was likely due to family considerations. A tenancy agreement was not prepared likely due to family considerations.

I find that the living arrangement is a residential tenancy that falls under the Act. The hearing proceeded.

#### Issue to be Decided

- Is the tenancy ending based on a sale of the property and issuance of the Two Month Notice to End Tenancy for Landlord's Use of Property?
- Is the Landlord entitled to an order of possession for the rental unit?

#### Background and Evidence

The Landlords and Tenants testified that the tenancy began in April 2018 and is on a month to month basis. Rent in the amount of \$1,000.00 is to be paid to the Landlord by the first day of each month.

The Landlord testified that she sold the residential property and the buyer of the property wants vacant possession of the rental unit. The purchaser gave the Landlord a Buyers Notice to Seller stating that they have a good faith intention to occupy the property and asked the Landlord to issue a notice to end tenancy to the Tenants.

The Landlord issued the Tenants a Two Month Notice To End Tenancy for Landlord's Use of Property dated December 27, 2022 ("the Two Month Notice"). The reason for ending the tenancy cited within the Notice is:

*All of the conditions for the sale of the rental; unit have been satisfied and the purchaser has asked the Landlord in writing to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The Two Month Notice provides the name and address of the purchaser. The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is February 28, 2023.

The Two Month Notice provides information for tenants who receive the notice. The notice provides that a tenant has the right to dispute the notice within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants testified that they received the Two Month Notice on December 29, 2022, and they disputed the Two Month Notice on January 3, 2023, within the required time period.

The Landlord testified that the buyer informed her that the buyers parents will be moving into the property. The closing date for the sale is March 1, 2023.

The Tenants were asked why they disputed the Two Month Notice. The Tenants testified that the buyer owns another home elsewhere and that the rental house needs repairs, so they believe he will apply for building permits to build a new home on the property.

The Tenants were asked why they did not name the buyer in their application for dispute resolution and serve him with the Notice of Dispute Resolution Proceeding. The Tenants replied that they believed that the Landlord would do that.

The Landlord testified that the house is old and she speculates that the Landlord may live in the unit or may tear it down.

### Analysis

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

*"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement."*

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

I accept the Landlords testimony that she sold the home and the buyer asked for vacant possession of the unit. I accept her testimony that she received a Buyers Notice to Seller dated December 23, 2022 stating that the buyer has a good faith intention to occupy the unit.

I find that the Landlord followed the direction of the buyer and issued a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 27, 2022. The Two Month Notice indicates that all of the conditions for the sale of the rental; unit have been satisfied and the purchaser has asked the Landlord in writing to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit. I find that the Two Month Notice was issued in accordance with section 49(5) of the Act.

The Act requires the buyer or a close family member to occupy the residential property for a period of 6 months. There are no restrictions under the Act on what the buyer can do with the residential property after the 6 month period expires. The buyer could live in the unit; rent the unit; or demolish the unit and build a new home.

The Tenants have no actual proof that the buyer does not intend to occupy the residential property for 6 months. The Tenants are speculating on what may occur.

The Tenants did not compel the buyer to attend the hearing. The Tenants are the applicants, and they have a responsibility to name the buyer in their application. The

Landlord served the Two Month Notice upon direction of the buyer and in accordance with the Act. The Landlord cannot amend the Tenants' application to name the buyer.

The Tenants raised an issue of good faith that I find is pure speculation. They had no evidence to support that the buyer is not intending to occupy the unit for 6 months. The buyer was not served with note of the hearing to respond to the Tenants' speculation which I find is unfounded. The Landlord is not in a position to answer for the buyer on what they intend to do with the residential property.

I find that the dispute of the Two Month Notice is based on unfounded concerns on what the buyer may or may not do with the property. The Tenants application to cancel the Two Month Notice is dismissed without leave to reapply. The tenancy ends on February 28, 2023.

Section 51(2) of the Act provides that the Tenants may apply for dispute resolution seeking compensation of 12 months rent if the purchaser does not establish that they accomplished the purpose of the Two Month Notice in a reasonable period of time after the effective date of the notice and use the unit for the stated purpose for at least 6 months duration.

Under section 55 of the Act, when a Tenant's Application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. I find that the Two Month Notice complies with the requirements of form and content. Since the Landlord still owns the property when the tenancy ends, I grant the Landlord an Order of Possession for the rental unit effective at 1:00 pm on February 28, 2023.

This order of possession may be filed in the Supreme Court and enforced as an order of that Court.

### Conclusion

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated December 27, 2022 was not successful and is dismissed.

I grant the Landlord an order of possession for the rental unit effective February 28, 2023, after service on the Tenants. This order may be filed in the Supreme Court and enforced 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 *Residential Tenancy Act*.

Dated: February 14, 2023

---

Residential Tenancy Branch